TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 446

UNITED STATES OF AMERICA, PETITIONER,

vs.

DANIEL M. LEFKOWITZ AND PAULINE PAPE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 16, 1951

CERTIORARI GRANTED NOVEMBER 26, 1951

(36250)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 466

UNITED STATES OF AMERICA, PETITIONER

vs.

DANIEL M. LEFKOWITZ AND PAULINE PARIS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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In United States District Court, Southern District of New York

IN THE MATTER OF THE APPLICATION OF DANIEL M. LEFKOWITZ AND Pauline Paris for the suppression of any and all evidence of whatever nature, obtained directly or indirectly by reason of a search of premises Room #604 in #1547 Broadway, in the Borough of Manhattan, city and State of New York, and for the return of all books, papers, correspondence and all other papers and records belonging to the said Daniel M. Lefkowitz, etc.

UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, respondent

M. 13-367

Docket Entries

1931

Jan. 22. Filed note of issue. Motion to suppress evidence. Ret.
Feb. 16. Filed affidavits and order to show cause to suppress evidence.
Feb. 16. Filed reply affidavit of Ulysses S. Grant, assistant United States attorney.
Feb. 16. Filed reply affidavit of Thomas Guilfoyle, special prohibition agent.
Feb. 16. Filed reply affidavit of Harry Morgenstern, deputy United States marshal.
Feb. 16. Filed reply affidavit of Laurence Delmore, special prohibition agent.
Feb. 16. Filed reply affidavit of J. Ray Olivera, special prohibition agent.
Feb. 16. Filed reply affidavit of Joseph M. Hugo, special prohibition agent.
Feb. 16. Filed opinion, No. 6342, denying motion. Settling order on two days' notice. Caffey, J.
Feb. 18. Filed order amending proceeding to include Pauline Paris as one of the petitioners herein. Caffey, J.
Feb. 18. Filed affidavit of service and order denying motion to suppress evidence and dismissing proceeding. Caffey, J.
Feb. 18. Filed affidavit of service and order vacating stay in order to show cause, except as modified in this order. Caffey, J.
Feb. 28. Filed petition for allowance of appeal to Circuit Court of Appeals.
Feb. 28. Filed order allowing appeal.
Feb. 28. Filed assignment of errors.
Feb. 28. Filed citation to Circuit Court of Appeals. Returnable March 25, 1931.

In United States District Court

[Title omitted.]

Order to show cause.

Upon the annexed affidavit of Daniel M. Lefkowitz, duly verified the 21st day of January, 1931, and the affidavit of Pauline Paris, duly verified the 20th day of January, 1931, and upon all the pleadings and proceedings heretofore had herein.

Let the United States attorney show cause at a stated term of this court, to be held in and for the Southern District of New York, at the Old Post Office Building, in room 331 thereof, in the Borough of Manhattan, city of New York, on the 26th day of January, 1931, at 10.30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why an order should not be made herein for the suppression of any and all evidence of whatever nature obtained directly or indirectly by reason of a search of premises Room #604, in #1547 Broadway, in the Borough of Manhattan, city of New York, on the 12th day of January, 1931, and for the return of all books, papers, correspondence, and other papers, records, and things belonging to the said Daniel M. Lefkowitz, and why an order should not be made herein for such other and further relief as to this court may seem just and proper.

And in the meantime and pending the hearing and determination of this motion and the entry of an order thereon, the United States attorney, any and all agents of the Department of Justice, any and all agents of the Treasury Department, the United States marshal for the southern district of New York and/or his deputies are hereby stayed from using the evidence sought to be suppressed herein for any purpose whatsoever as well as any information directly or indirectly gained therefrom.

Sufficient reason appearing therefor, let service of a copy of this order, together with a copy of the affidavit annexed hereto made upon the United States attorney on or before January 22nd, 1931, be deemed sufficient.

Dated, New York, January 21st, 1931.

HENRY W. GODDARD,
U. S. D. J.

In United States District Court

[Title omitted.]

Affidavit of Pauline Paris, read in support of motion

STATE OF NEW YORK,
City of New York, Southern District of New York, ss:

Pauline Paris, being duly sworn, deposes and says:

That she is a stenographer and typist and is one of the occupants of an office room #604, located at #1547 Broadway, in the Borough of Manhattan, city of New York.

That the said office consists of two rooms, the outer office or reception room and an inner office. The outer room or reception room is separated from the inner office by a partition.

That on the 12th day of January, 1931, about 4 o'clock in the afternoon, deponent returned to room #604 after a short absence. When she did so she saw four or five men unknown to her in the inner office. There was also present a Mr. Williams with whom deponent is acquainted by reason of the fact that said Mr. Williams occupies an office on the same floor in #1547 Broadway, New York City.

When deponent came into the room one of these men came up to her and stated he was a Department of Justice Agent and told her to go into the inner office and sit down; she did so. There were Mr. Lefkowitz, Mr. Williams, and the other men, whom I later learned were Department of Justice agents in that room. This agent thereupon walked to the outer room of the office and looked through all the drawers of the desk. He took deponent's purse therefrom, brought it into the room and examined the contents thereof, but did not take anything.

While deponent was in the office the agents started to search the drawers of the desk and examine the contents thereof. Mr. Lefkowitz asked the agents whether they had search warrants. One of them said that they did, and when Mr. Lefkowit asked to see it the agent stated that when he retained an attorney he would explain everything to him. Mr. Lefkowitz thereupon protested and told them they had no right or authority to search the premises and examine everything they found, which they later carried away. One of the agents retorted that if Mr. Lefkowitz did not keep quiet he would have his face slapped. The men took everything they could find. They searched all the drawers in the desks in the inner and outer rooms and every part of the room. They took and examined books that were in the desk, letters and papers, and even examined the contents of the wastepaper baskets and carried everything away. They also took from one of the desks some personal raffle books of deponent of a charitable organization of which she is a member.

One of the agents, a man whose name deponent has since learned is Olivra, asked her to step into the outer room of the office and told her in the presence of one of the other agents that he did not want to see her stay in jail overnight and ordered her to type a letter addressed to Mr. Ulysses S. Grant, assistant United States attorney, the contents of which to deponent's best recollection was to the effect that "everything having gone all right, I would like to have the undersigned go free on bail." He told deponent to type his name at the end, J. Ray Oliver, and made deponent sign her name under his.

Deponent has every reason to believe that this was a subterfuge in order to have her type the letter and sign her name so that it could be used in this proceeding against her, which deponent is informed and verily believes is unconstitutional and constitutes a violation of

the fourth and fifth amendments and in violation of due process of law.

Deponent knew these men were United States Government agents and that she had to do what she was told. She did not do this voluntarily and only upon the direction and command of this agent, and, therefore, demands its return, its suppression as evidence in any manner whatsoever in this cause, and that any copies thereof should be ordered destroyed and its contents not used, and any information derived therefrom be not used for any purpose whatsoever.

That the arrest of your deponent is unauthorized in that there was no proof which would serve to identify your deponent as the "Jane Doe" for one of the persons for whose apprehension the said warrant of arrest was issued. That there are no facts stated serving to connect your deponent with the crime purported to be set forth in the complaint.

For these reasons deponent's arrest was illegal and wholly unauthorized by any warrant duly issued by any United States commissioner.

Wherefore, your deponent joins in the application of Daniel M. Lefkowitz herein and prays that the letter taken from deponent and referred to herein belonging to her, upon the search heretofore described at premises room #604, in #1547 Broadway, in the Borough of Manhattan, city and State of New York, as well as all information of any kind or nature or any copy thereof gained as a result of said search be suppressed as evidence and that the said letter and any and all copies thereof be returned to your deponent forthwith and that any information obtained therefrom be not used for any purpose whatsoever and that your deponent have such other and further relief as to the court may seem just and proper.

PAULINE PARIS.

Sworn to before me this 20th day of January, 1931.

MAX SCHULTZ,
Notary Public, N. Y. County #924.
Comm. expires March 30, 1932.

In United States District Court

[Title omitted.]

Affidavit of Daniel M. Lefkowitz, read in support of motion

CITY, COUNTY, AND SOUTHERN DISTRICT OF NEW YORK, *ss.:*

Daniel M. Lefkowitz, being duly sworn, deposes and says:

I am the applicant in the above-entitled proceeding. That this affidavit is submitted in support of a motion to obtain an order suppressing any and all evidence of whatever nature obtained directly or indirectly by reason of a search of premises #1547 Broadway, room #604, in the Borough of Manhattan, City of New York,

and for the return of all the books, notes, correspondence, and other papers, records, and things belonging to your deponent.

That deponent has an office at the aforementioned premises. That your deponent at all the times mentioned herein was and now is entitled to the possession of the papers, records, and other documents, the suppression and return of which are sought herein.

On Monday afternoon, January 12, 1981, while I was seated in an inner room of room #604, a man who was at the time unknown to me, but whom I now know to be one Olivera, exhibited a badge and informed your deponent that he was a United States Department of Justice agent and that deponent was under arrest. Your deponent then demanded of said agent that he exhibit a warrant of arrest or other order authorizing your deponent's arrest. Mr. Olivera said that when a lawyer was retained on deponent's behalf he would explain to deponent what it was all about. He at no time exhibited to deponent any warrant of arrest, any search warrant, or other order of the court.

That Mr. Olivera then went to the door and four other men entered the office. There was present at the time a Mr. Williams, who has an office on the same floor, and is engaged in the fair and carnival business, but with whom I had no business dealings. The agent seized Mr. Williams and told him that he was under arrest and proceeded to search his person. Mr. Williams protested the right to search his person, but to no avail. There was also present at that time a young lady by the name of Pauline Paris, who was also placed under arrest over her protest.

Your deponent's person was then forcibly searched without his consent and over his protest. Deponent stated to the agents, and particularly to Mr. Olivera, that he had no right to search him. One of the agents retorted that deponent should keep quiet or he would have his face slapped.

The men then proceeded to make a search of the premises, upon which your deponent again demanded by what right or authority they were searching the premises and taking the property; the agents responded by saying the commissioner would tell deponent all about it when he got there. The agents then proceeded to search the desk in deponent's inner office and the desk in the outer office or reception room. They opened every drawer of these desks, examined the contents thereof and extracted numerous papers and other records therefrom and upon the conclusion of their search carried them away.

That the books, papers, letters, records, and other documents taken and carried away as aforesaid were taken from the following places: From the outer office, one black book and one white book containing names and addresses, a stenographic note-book, stationery, letterheads, letters, stamps, order slips, envelopes with names and addresses typed thereon, a used sheet of carbon paper, sheets of paper with a list of names; from the inner office, letterheads of the firm of Lefkowitz & Bernstein, a leather book with names and telephone

numbers, a list of names and addresses, a check, blank order books. In addition, the agents took miscellaneous paper scraps from the waste baskets in both the inner and the outer office. A bill-fold with various personal effects therein was taken from the person of your deponent. In addition to the examination and investigation hereinbefore described, the agents generally examined the papers and other records lying around in your deponent's office and took them into their possession.

No search warrant or other order of the court was issued commanding the aforementioned indiscriminate and rummaging search. That your deponent estimates that the aforementioned search lasted about one-half hour. That upon its conclusion your deponent in custody of the Department of Justice men was taken before Hon. Garrett W. Cotter, the commissioner for the Southern District of New York. The books, correspondence, and other documents hereinbefore described were at the same time carried away by the Department of Justice agents.

That at no time during the course of the aforementioned search and seizure did the agents of the Department of Justice exhibit to your deponent any warrant for his arrest or any warrant for the search of the pemises in which he was arrested, nor did these agents give to your deponent any receipt or other notation indicating the property and documents taken away by them.

That the said examination, investigation, and seizure were made over the protest and without the consent or authorization of your deponent at any time.

That your deponent is informed and verily believes that the aforesaid examination, investigation, search, and seizure were conducted solely for the purpose of securing evidence to connect your deponent with an alleged conspiracy to violate the laws of the United States. That the source of your deponent's information and the grounds of his belief is a complaint filed upon his arraignment before Hon. Garrett W. Cotter, United States commissioner for the Southern District of New York.

Upon deponent's arraignment before Commissioner Cotter your deponent protested against the unlimited and rummaging search of deponent's office and the seizure of the books, papers, records, correspondence, and other documents therein found. That the said commissioner stated to your deponent that the agents had no right to search deponent's office and to take away the books, papers, records, correspondence, and other documents therefrom. That the said commissioner held your deponent for hearing and released your deponent upon the furnishing of bail in the sum of $2,000.00.

That the said unwarranted and unlawful search hereinbefore described was a violation of deponent's rights under the fourth amendment of the United States Constitution. The first clause of the fourth amendment declares:

"The right of the people to be secure in their persons, house, papers, and effects against unreasonable searches and seizures shall not be violated."

In addition, said search was in violation of deponent's rights under the fifth amendment to the United States Constitution, which requires that:

"No person shall be compelled in any criminal case to be a witness against himself nor be deprived of liberty or property without due process of law."

That the examination and seizure of the books, papers, records, correspondence, and other documents constitute nothing less than a "fishing expedition" through your deponent's private papers and records. That it was a lawless invasion of deponent's premises and a general exploratory search made in the hope that some evidence of crime might be found on the premises. That this general search and rummaging of deponent's office was violative of his constitutional privileges under the fourth and fifth amendments to the Constitution of the United States.

That the forceful taking of the aforementioned books, papers, records, correspondence, and other documents without the consent or acquiescence of your deponent was an unconstitutional and wrongful act and violative of the fourth and fifth amendments.

That the aforementioned search and seizure was conducted by agents of the Department of Justice without any search warrant, without any probable cause, and without any order of any nature whatsoever for a search and seizure. Hence, the search was made contrary to that right of your deponent which guarantees him against search and seizures not based upon an oath or affirmation. That the aforementioned search and seizure was conducted by agents of the Department of Justice acting under the direction of Ulysses S. Grant, Esq., assistant United States attorney for the Southern District of New York.

That all of the books, papers, and documents taken from his person and premises in the manner aforesaid are now in the possession of Ulysses S. Grant, assistant United States attorney, upon whom demand has been made for their return, which demand has been refused.

That since your deponent was arrested your deponent has learned that the arrest was made under the color of a warrant of arrest. That your deponent is informed and verily believes that the said warrant of arrest under which it has been alleged by the United States marshal that your deponent was taken into custody was defective and insufficient as a matter of law, on the face thereof in that the complaint upon which it is founded does not state facts constituting a crime under any statute of the United States or under the statutes mentioned in the said warrant and complaint.

That the arrest of your deponent was unauthorized, in that there were no facts stated in the complaint which would serve to identify

your deponent as "Henry Miller," one of the persons for whose apprehension the said warrant was issued and one of the persons concerning whom the said complaint was filed. At this point deponent respectfully calls the court's attention to the fact that the United States marshal for the Southern District of New York in filing his return stated that he had executed the warrant above referred to by arresting the "within named Henry Miller alias Daniel Lefkowitz." That there are no facts stated in the said complaint tending to connect your deponent with the crime said complaint purports to set forth.

That for these reasons deponent's arrest was illegal and wholly unauthorized.

That your deponent has never been convicted, arrested, or accused of any crime either against the State or Federal laws.

That the reason your deponent proceeds by an order to show cause instead of by the usual notice of motion is because the books, papers, records, correspondence, and other documents are in the possession of the assistant United States attorney in charge of this case and your deponent has been informed and verily believes that the said assistant United States attorney intends to use said documents before the United States grand jury. Your deponent desires to secure the suppression of this evidence before the said assistant United States attorney will have used said evidence in any grand jury investigation or other proceeding.

Wherefore, your deponent respectfully prays that an order to show cause issue herein containing a temporary stay of any and all proceedings on the part of the United States attorney for the Southern District of New York, any and all agents of the Department of Justice, and all agents of the Treasury Department and of the United States marshal for the Southern District of New York and/or any of his deputies, and further directing the United States attorney for the Southern District of New York to show cause why any and all books, papers, documents, and other papers and records belonging to him and obtained as aforesaid upon the search heretofore described of premises #1547 Broadway, in room #604, in the Borough of Manhattan, City of New York, as well as all information of any kind or nature gained as a result of said search directly or indirectly be suppressed as evidence and that any photostats, names, addresses, or copies be destroyed and not used and that the books, papers, documents, correspondence and records as aforesaid be returned to your deponent forthwith and why your deponent should not have such other and further relief as to the court may seem just and proper.

DANIEL M. LEFKOWITZ.

Sworn to before me this 21st day of January, 1931.

MILTON B. SEASONWEIN,
Notary Public, N. Y. County # 946.

Comm. expires March 30, 1932.

In United States District Court

[Title omitted.]

Affidavit of Ulysses S. Grant, read in opposition to motion

STATE OF NEW YORK,
County of New York, Southern District of New York, ss.:

Ulysses S. Grant, being duly sworn, deposes and says:

I am an assistant United States attorney for the Southern District of New York and am in immediate charge of the above-entitled matter on behalf of the acting United States attorney, Robert E. Manley.

The order to show cause, signed by Judge Henry W. Goddard on January 21, 1931, was served on the office of the United States attorney on January 22, 1931, and was given to me late in the afternoon of that day. The grand jury in this district handed up to Judge John C. Knox an indictment, a copy of which is annexed hereto. Judge Knox received this indictment about 11.15 o'clock in the morning of January 22, 1931, and the indictment is now on file with the clerk of this court.

I have read the affidavits of Daniel M. Lefkowitz and Pauline Paris submitted in support of the application of Daniel M. Lefkowitz for the order to show cause and note that Daniel M. Lefkowitz states at page 5 of this affidavit "that the examination and seizure of the books, papers, records, correspondence, and other documents constitute nothing less than a 'fishing expedition' through your deponent's private papers and records. That it was a lawless invasion of deponent's premises and a general exploratory search made in the hope that some evidence of crime might be found on the premises." I infer this statement that the petitioner contends that the Government did not have any evidence that the petitioner was guilty of the crime charged in the complaint filed with Commissioner Garrett W. Cotter and referred to in petitioner's moving papers prior to the search referred to in the moving papers. This is not a fact. Special agents of the Department of Justice, Bureau of Prohibition, J. Ray Olivera and Lawrence Delmore, on the morning of January 12, 1931, informed me of various facts and information obtained by them and other agents in the course of official investigations, most of which facts are stated in the affidavits submitted herewith in opposition to the motion. Special Agent Olivera states in the complaint sworn to by him before Commissioner Cotter what I believe to be ample facts, some of which were known to him and some of which he was informed of by reliable sources of information stated in the complaint, to warrant the charge made in the complaint and the issuance of a warrant of arrest. As a matter of fact, none of the papers or other articles seized at the time of the arrest of the petitioner in room 604 in the building 1547 Broadway, New York City, were used before the

grand jury which found the indictment referred to above, with the exception of certain papers and articles taken from the person of the petitioner, Daniel M. Lefkowitz, after, as I am informed, he had been placed under arrest.

I note that it is stated in the affidavit of the petitioner that all the books, papers, and documents taken from petitioner's person and the premises referred to in the moving papers, were in my possession at the time the affidavit was sworn to and a demand had been made upon me for their return and the demand refused. As a matter of fact, only the papers and things, which I am informed were taken from the person of the petitioner, were in my possession at that time, the rest of the papers and articles being in the possesion of Horace J. Simmons, special agent in charge, Department of Justice, Sub-Treasury Building, New York City, and were being used by him and special agents, I am informed, primarily for the purpose of ascertaining the identity of any other persons that may have been associated with the petitioner and the other persons that may have been associated with the petitioner and the other persons named in the complaint in committing the crime charged in the said complaint and indictment. Since receiving the order to show cause, however, I have requested that all the papers seized at the time of the arrest, referred to in the moving papers, be sent to my office, and I do now have the papers, and I admit that I informed petitioner's attorneys that I would not return the papers and other articles, as I believed the search and seizure incident to the arrest of the defendants to be valid and that the Government had the right to use the papers and other articles seized. I have, however, returned to the attorneys for Daniel M. Lefkowitz a certain check which, I am informed, was taken from the person of Daniel M. Lefkowitz at the time of his arrest, and also his automobile license, which, I am informed, was taken from his person at the time of his arrest, upon his attorneys stipulating that photostatic copies of these papers could be used with the same force and effect as the originals. I returned these papers at the request of Daniel M. Lefkowitz and his attorneys for the sole reason that I did not wish to submit the defendant Daniel M. Lefkowitz to any unnecessary inconvenience or hardship by retaining papers which he would need for operating his automobile or to obtain money which he claimed to be entitled to by means of the check, when photostatic copies could be used by the Government with the same force and effect. I also have returned to Daniel M. Lefkowitz the papers referred to in the annexed copy of a receipt and stipulation with the understanding therein stated. I believe it is to the interest of the United States to retain the originals of the rest of the papers seized, and, therefore, on behalf of the United States, oppose the application of the petitioner for the return of these papers and for the suppression of their use as evidence either against the petitioner or other persons whose guilt may be disclosed by the papers.

Upon the filing of the complaint with Commissioner Cotter as aforesaid, he issued a warrant calling for the arrest of the persons described in the complaint. This warrant was delivered to the acting United States marshal, and I arranged with him to have a deputy marshal execute the warrant and also arrange to have several special agents of the Department of Justice to accompany the deputy marshal to assist in making the arrests. During the latter part of the afternoon of January 12, 1931, I received a telephone call from Special Agent Olivera. He informed me that an arrest of several persons had been made, including that of the girl designated as "Jane Doe" in the complaint and warrant, and he asked me if the prisoners could be arraigned before Commissioner Cotter so they could be released on bail. I did arrange for Commissioner Cotter to stay in his office until the prisoners were brought before him for arraignment. The prisoners were arraigned about 5.15 in the afternoon of that day. At the arraignment, I moved that the complaint be amended so as to insert the true name of the defendants and also to add the name of Benjamin Williams, who, I am informed, was arrested in room 604 in the building 1547 Broadway, at the time of the arrest of the other defendants. I understood that the commissioner granted this motion. The defendants were then released on bail fixed by the commissioner and the hearing was set for February 10, 1931. The defendant Benjamin Williams called upon me at my office the next day and informed me that he was not a party to the conspiracy charged in the complaint. I had a grand jury subpœna issued and served upon him and he appeared before the grand jury on January 21, 1931, and as a result of his testimony received the immunity provided for by section 30 of Title II of the national prohibition act. I thereupon took him before Commissioner Cotter on January 21, 1931, and moved for the dismissal of the complaint as to him, and this motion was granted. There is, therefore, no charge now pending against Benjamin Williams. I am informed, however, by the special agents of the Department of Justice who were present at the time of his arrest and by Benjamin Williams, and I believe that Benjamin Williams had in his coat pocket at the time of his arrest, in room 604 in the building 1547 Broadway, a quart bottle of intoxicating liquor.

It is, of course, not convenient to attach copies of all the seized papers to the affidavits submitted in opposition to this petition, but I expect to produce in court at the time of the argument of the motion the papers and articles seized, all of which, I am informed by the agents and deputy marshal, are referred to and described in the affidavits of Olivera, Morganstern, Delmore, and Guilfoyle, and I respectfully request that the original papers be examined by the court and that they be considered as referred to in the affidavits, with the same force and effect as though they were annexed to the affidavits. The papers and articles taken from Benjamin Williams have been returned to him by me and are not enumerated in the said affidavits.

This affidavit is submitted by me in opposition to the application made herein for the suppression as evidence and the return of books, papers, and articles referred to in the moving papers.

ULYSSES S. GRANT.

Sworn to before me this 31st day of January, 1931.

[SEAL.] CATHARINE M. CONLAN,
Notary Public.

Bronx County No. 61, Reg. 3117. Cert. filed in N. Y. Co. No. 155, Reg. No. 1C138. Commission expires March 30, 1931.

Indictment, attached as exhibit to affidavit of Ulysses S. Grant

In the District Court of the United States of America for the Southern District of New York

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The grand jurors of the United States of America, duly empaneled and sworn in the District Court of the United States for the Southern District of New York, and inquiring for said district, upon their oath present:

That heretofore, to wit, beginning on the 1st day of September, 1929, and continuing down to and including the 12th day of January, 1931, at the city of New York, in the Southern District of New York and within the jurisdiction of this court, Daniel M. Lefkowitz, Herman Bernstein, and Pauline Paris, the defendants herein, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other and with divers other persons whose names are to the grand jurors unknown, to commit divers offenses against the United States, to wit, to sell, to possess, to transport, to take orders for, to solicit orders for, and to advertise for sale, keeping for sale, the furnishing of, the price, and where to obtain intoxicating liquor containing more than one-half of one per cent of alcohol by volume and fit and intended for use for beverage purposes, and to use and induce common carriers such as express and freight companies and agents and employees of such common carriers, to carry and ship packages and receptacles containing intoxicating liquor containing more than one-half of one per cent of alcohol by volume and fit and intended for use for beverage purposes, without notifying the said carriers of the true nature and character of said shipments and to maintain a common nuisance in room 604 in the building known as 1547 Broadway, city, county, State, and Southern District of New York, and to do all of the aforesaid without permits and in violation of and contrary to the provisions of and otherwise than as authorized by the act of Congress of October 28, 1919, commonly known as the national prohibition act and acts amendatory thereof and supplemental thereto and regulations issued and promulgated under the provisions of said acts.

It was a part of said conspiracy that the defendant Herman Bernstein should rent a room in the building known as 1547 Broadway, city, county, State and Southern District of New York, that the defendants should occupy said room ostensibly for the purpose of conducting a real-estate business under the trade name of "The Southern Agency—D. M. Lefkowit," but actually for the purpose of maintaining in said room a common nuisance, and to carry out the aforesaid other unlawful objects of the said conspiracy by soliciting by letter sent by the defendants through the United States mails, by telephone, and otherwise, under the name of "Henry Miller" and "William Salmon" from divers persons throughout the United States orders for divers kinds of intoxicating liquors containing more than one-half of one per cent of alcohol by volume and fit for beverage purposes, and to furnish said intoxicating liquor for beverage purposes to the persons ordering said intoxicating liquor as aforesaid, and that the defendants should use said room as their headquarters from which to arrange for the shipment and delivery of said intoxicating liquor to the said divers persons ordering said intoxicating liquor from the defendants by way, among others, of common carriers such as the railway express agency without informing the common carrier of the fact that intoxicating liquor was being shipped and by using false and fictitious names and addresses as shipper of said liquor, and as their headquarters from which to collect payment for the said intoxicating liquor so sold, shipped, and delivered by the defendants.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, on or about October 30, 1929, at the city, county, State, and Southern District of New York and within the jurisdiction of this court, the defendant Herman Bernstein had a conversation with Sadie Lindsay, the assistant manager of the building known as 1547 Broadway, New York City, with reference to and arranged with said Sadie Lindsay for the renting from month to month by Herman Bernstein of room 604 in said building 1547 Broadway.

2. In pursuance of said conspiracy and to effect the objects thereof, on January 31, 1931, at the city, county, State, and Southern District of New York and within the jurisdiction of this court, in room 604 of the building known as 1547 Broadway, New York City, the defendant Pauline Paris had a conversation with special agents of the Department of Justice then using the names of Jose Hernandez and Manuel Negroni with reference to a past shipment of intoxicating liquor by defendants to Buffalo, New York, and with reference, among other things, to prices of liquor that could be furnished by defendants and possible future deliveries of liquor by defendants to said Manuel Negroni.

3. In pursuance of said conspiracy and to effect the objects thereof, on January 5, 1931, at the city, county, State, and Southern District

of New York, and within the jurisdiction of this court, in room 604 of the building known as 1547 Broadway, New York City, the defendant Daniel M. Lefkowitz had a conversation with a special agent of the Department of Justice then using the name of Manuel Negroni with reference to a past shipment of liquor by defendants to Buffalo, New York, and a possible future shipment of liquor to said Manuel Negroni.

4. In pursuance of said conspiracy and to effect the objects thereof, on January 7, 1931, at the city, State, and Southern District of New York and within the jurisdiction of this court, the defendants transported and caused to be transported one case of Scotch whiskey containing more than one-half of one per cent of alcohol by volume and fit and intended for use for beverage purposes.

5. In pursuance of said conspiracy and to effect the objects thereof, on or about October 28, 1930, in the Southern District of New York, the defendants delivered and caused to be delivered to the Railway Express Agency two packages containing intoxicating liquor containing more than one-half of one per cent of alcohol by volume and fit and intended for use for beverage purposes, for shipment by said Railway Express Agency to Anthony Craig at Buffalo, New York, without informing said Railway Express Agency that said packages contained intoxicating liquor and gave to said Railway Express Agency the fictitious shipper's name of Lee Brothers.

6. In pursuance of said conspiracy and to effect the objects thereof, on or about October 31, 1929, in the Southern District of New York, the defendant Daniel M. Lefkowitz signed a request and contract for the installation by the New York Telephone Company in room 604 in said building 1547 Broadway, New York City, of an individual semicoin box telephone and for telephone service in said room.

7. In pursuance of said conspiracy and to effect the objects thereof, on or about October 30, 1929, at the city, county, State, and Southern District of New York and within the jurisdiction of this court, the defendant Herman Bernstein signed a request and contract for electric-light service to be furnished to him in room 604 in the said building 1547 Broadway, New York City, by the New York Edison Company.

8. In pursuance of said conspiracy and to effect the objects thereof, on January 6, 1931, in the Southern District of New York, the defendant Pauline Paris had a telephone conversation with a special agent of the Department of Justice using the said name of Manuel Negroni with reference to a shipment and delivery of liquor by defendants to said Manuel Negroni.

Against the peace and dignity of the United States and contrary to the form of the statutes of the United States in such case made and provided. (Section 37 U. S. C. C. and act of October 28, 1919, and acts amendatory thereof and supplemental thereto and regulations issued thereunder.)

SECOND COUNT

And the grand jurors aforesaid, on their oaths aforesaid do further present:

That between October 30, 1929, and January 12, 1931, both dates inclusive, in the Southern District of New York and within the jurisdiction of this court, Daniel M. Lefkowitz, Herman Bernstein, and Pauline Paris, the defendants herein, unlawfully, wilfully, and knowingly did maintain a common nuisance at, and within room 604 in the building known as 1547 Broadway, city, county, State, and Southern District of New York, where intoxicating liquor, to wit, rye whiskey, Scotch whiskey, gin, creme de menthe, creme de cocoa, vermouth, and divers other kinds of intoxicating liquor, containing more than one-half of one per cent of alcohol by volume and fit and intended for use for beverage purposes, was sold and bartered in violation of title 2 of the national prohibition act; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Title II, act of October 28, 1919.)

ROBERT E. MANLEY,
Acting United States Attorney.

United States District Court, Southern District of New York

UNITED STATES OF AMERICA

vs.

DANIEL M. LEFKOWITZ, PAULINE PARIS, ET AL., DEFENDANTS

Stipulation annexed to affidavit of Ulysses S. Grant

Without prejudice to the rights of either the United States or the defendants, the following papers are hereby returned to defendant Daniel M. Lefkowitz and receipt is hereby acknowledged of these papers and it is stipulated and agreed that secondary evidence of the contents of these papers may be used by the United States with the same force and effect as the original papers and that the original papers will be returned to the United States attorney if requested:

3 small snapshot pictures of Daniel Lefkowitz's children.
1 membership card of Mecca Temple No. 19666.
1 membership card of the Consistory of New York City, 32°.
1 membership card of Ceba Lodge No. 954 (Free & Accepted Masons).
1 membership card of Tall Cedars of Lebanon #1691.
1 yellow slip of paper bearing name of James F. Hart, 36 West 44th Street, N. Y. C.
Municipal Court, Manhattan, 6th district.
Order of #7681/30 7665 $183.40.

Suspension—Certificate of registration, State of New York, Bureau of Motor Vehicles, dated Dec. 26, 1930, registration No. 3N 8314 & all 1930 & 1931 reg. Order No. 168803 issued to Daniel M. Lefkowitz, 207 W. 106th Street, New York City.

1 pawn ticket on the Provident Loan Society, 736 Seventh Avenue, New York City, amount, $150, for a diamond ring, ticket #86-072, dated Nov. 10, 1930.

DAVID P. SIEGEL,
Attorney for defendants.
ROBERT E. MANLEY,
Acting U. S. Attorney.
Per U. S. GRANT,
Asst. U. S. Atty.

In United States District Court

[Title omitted.]

Affidavit of Harry Morgenstern, read in opposition to motion

STATE OF NEW YORK,
County of New York, ss:

Harry Morgenstern, being duly sworn, deposes and says:

I am a deputy United States marshal for the Southern District of New York.

On January 12, 1931, in the afternoon of that day the acting United States marshal, Raymond J. Mulligan, handed to me in the marshal's office a warrant of arrest and a certified copy of a complaint, copies of which are annexed to the affidavit of Laurence Delmore, sworn to January 28, 1931, except that the complaint had not been amended at that time to include the name of Benjamin Williams and the true name of Henry Miller and Jane Doe were not inserted in the complaint or warrant at that time, and the return, of course, was not on the warrant at the time it was given to me.

Mr. Mulligan instructed me to execute the warrant, and informed me that Special Agent Olivera, who was introduced to me at that time by Mr. Mulligan, and three other special agents of the Department of Justice were to accompany me and assist me in making the arrest and would be able to identify the persons designated in the said complaint and warrant of arrest.

About 3.35 p. m. on January 12, 1931, I, in company with Special Agents Olivera, Delmore, Guilfoyle, and Gaughan left the Federal Building and proceeded to 1547 Broadway, New York. I, in company with two of the special agents, got off the elevator in said building at the fifth floor and proceeded up the stairway to the sixth floor and waited on the landing until we were informed by Agent Delmore that the persons, or some of them, named in the said warrant were present in room 604 in said building. We remained on the

landing not more than a few minutes when Delmore informed us that persons were in the room, and I and Special Agents Delmore, Guilfoyle, and Gaughan thereupon entered room 604 in said building for the purpose of effecting the arrest of the persons named in said warrant.

I should judge that this room is about 10 feet wide by 20 feet long and is divided into what might be called an inner and an outer office by a partition in about the middle of the room. As we entered the room I observed a man near the entrance to the inner office and I observed Special Agent Olivera point to this man and state "That is Henry Miller." I had the warrant of arrest in my hand at the time. I asked this man if he was Henry Miller and he told me that his name was Dan Lefkowitz. He having been identified by Olivera as the Henry Miller named in the complaint and warrant, I placed the man under arrest after he had asked me if I had a warrant, and I had informed him that I was a deputy United States marshal and did have a warrant of arrest. In my presence, Special Agent Delmore thereupon searched the person of Henry Miller (Dan Lefkowitz) and gave me the papers and articles which are enumerated in Delmore's said affidavit. These papers were given by me the following day to Assistant United States Attorney U. S. Grant, they having been in a sealed envelope in the safe in the marshal's office over night.

About between 5 and 10 minutes from the time we entered the said room, a young lady entered the room and I was informed by Special Agent Olivera that she was the Jane Doe named in the complaint and warrant of arrest. I thereupon placed her under arrest. She informed me that her name was Pauline Paris. The special agents who accompanied me made a search in said room 604 and I am informed and believe that they took with them various papers and articles which they retained in their possession.

There were two other men in the room. One man, who gave his name as Benjamin Williams, was placed under arrest by one of the special agents. I am informed and believe that he had a bottle of liquor in his pocket at the time. Another man was questioned, but was not placed under arrest or detained.

While we were in this room, Special Agent Olivera called Assistant United States Attorney Grant on the telephone and I was informed by him that he had arranged to have Commissioner Cotter remain in his office until the prisoners could be arraigned. I with my two prisoners and the special agents and said Benjamin Williams, who had been arrested by one of the special agents, later all left said room 604 and proceeded to the office of Commissioner Cotter, where the prisoners were arraigned and released on bail.

I have read the affidavit of Daniel Lefkowitz, sworn to January 21, 1931, and note that he states in his affidavit that at the time his person was searched, one of the agents told him to keep quiet or that he would slap his (Lefkowitz's) face. This is not true, no such statement was made at that time to Lefkowitz. I also

note that Daniel Lefkowitz states that at no time while we were in room 604 did the agents of the Department of Justice exhibit to Lefkowitz any warrant for his arrest or any warrant for the search of the premises. As aforesaid, prior to placing Lefkowitz under arrest, he asked me if I had a warrant and I told him that I was a deputy United States marshal and had a warrant of arrest and that I would let him read it as soon as we got through with the work in the room. Lefkowitz thereupon said to me "all right." At no time did I or any of the agents to my knowledge make any claim that we had a search warrant.

HARRY MORGENSTERN.

Sworn to before me this 28th day of January, 1931.

[SEAL.] CATHARINE M. CONLAN.
Notary Public.

Bronx County No. 61, Reg. 3117. Cert. filed in N. Y. Co. No. 155, Reg. No. 1C138. Commission expires March 30, 1931.

In United States District Court

[Title omitted.]

Affidavit of J. Ray Olivera, read in opposition to motion

STATE OF NEW YORK,
County of New York, ss.:

J. Ray Olivera, being duly sworn, deposes and says:

I am a special agent of the Department of Justice, Bureau of Prohibition.

On January 12, 1931, I swore to a complaint before Commissioner Garrett W. Cotter, a photostatic copy of which complaint is annexed to the affidavit of Laurence Delmore, sworn to January 28, 1931. I here reaffirm the allegations contained in said complaint.

I have read the affidavit of Joseph M. Hugo, sworn to January 24, 1931, and all the information therein contained was known to me prior to January 12, 1931, with the exception of the fact of the receipt of the William Salmon letter by Hugo on January 12, 1931. Some of the information contained in said Hugo's affidavit as indicated in the affidavit was known to me of my own personal knowledge and the rest of the information was given to me by Special Agent Hugo. Some of the facts stated in Hugo's affidavit are stated in the said complaint sworn to by me before Commissioner Cotter on January 12, 1931.

On January 12, 1931, I went with Deputy United States Marshal Morgenstern and Special Agents Delmore, Guilfoyle, and Gaughan to assist the said deputy marshal in effecting the arrest of the persons named in said complaint and warrant of arrest which had been issued by Commissioner Cotter and given to said deputy United States marshal by the acting United States marshal in the after-

noon of January 12th. We left the Federal Building, New York City, about 3.35 p. m. and arrived at the building No. 1547 Broadway about 4.00 p. m. We all entered the elevator in said building and I and Special Agent Delmore proceeded to the 6th floor, while the deputy marshal and the other two special agents got off at the fifth floor.

On January 9, 1931, I called a number, Chickering 4-8928, which is the number of the telephone in room 604 in the building 1547 Broadway. A girl answered the telephone whose voice I recognized as that of the girl I had talked to previously in said room and who I now know to be Pauline Paris and who is the girl designated by me in said complaint as "Jane Doe." At this time she informed me that she could receive orders for whiskey and asked me if the stuff that I had received was all right. I asked for an appointment with Miller and she said he was not in but that I could talk to his partner. A man then came to the telephone and he also asked me if the stuff I received was good and I arranged with him to come to said room 604 on Monday, January 12, 1931, at 3.00 p. m. to see Miller and arrange for further orders and deliveries. Since I had this appointment, I entered room 604 on January 12th first in order to ascertain whether or not the persons or any of them named in the complaint and warrant of arrest were present in the room at that time. I had arranged with Special Agent Delmore to inform him of the presence of any of said persons in the room by taking off my hat upon entering the room if they were there. I entered said room at about 4.00 p. m. on January 12th and upon observing the man who I at that time knew as Henry Miller standing near the entrance to the inner office of said room, I took my hat off. As I entered the room, another man who I now know as Benjamin Williams preceded me into said room 604. This man Williams said to Henry Miller who I now know to be Dan Lefkowitz "I've got it" and pointed to his coat pocket where I observed a package. Henry Miller (Daniel Lefkowitz) said "I see you got it, I can smell it" in a joking tone of voice. When Henry Miller saw me he said "Come on in." I said "If you are busy, I will wait," and I stayed by the entrance to room 604. It was not more than a few minutes, and in fact, not more than two minutes, that the rest of the men who accompanied me to the building entered the room. As the men entered, Miller was leading me by the arm in a friendly manner into the inner office. As the men came in, Miller looked at me in a surprised manner, and I said to him, "That's all right Miller, we are Federal agents," and I pointed to Henry Miller and told the marshal that "He is the man known to me as Henry Miller." The deputy marshal thereupon placed him under arrest.

Between 5 and 10 minutes after we first entered the room a young lady entered the room who is the young lady with whom I have had the conversation referred to in the said complaint sworn to by me that day before Commissioner Cotter. I informed the deputy marshal that she was the "Jane Doe" referred to by me in the complaint and he thereupon placed her under arrest.

Room 604 is about 10 feet wide by 20 feet long and is divided by a partition into what might be called as an inner and outer office. Prior to the girl entering room 604, I had remained in the outer office and was searching the desk which was used by her on the other occasions when I had been in the said room.

The center drawer in the stenographer's desk was open part way and I saw a book and a pocketbook in the drawer. The book is the cardboard loose-leaf binder referred to in the affidavit of Special Agent Guilfoyle as the 8th item taken from said desk. When the young lady who I now know to be Pauline Paris entered the room, I handed her her pocketbook. After she was placed under arrest and was sitting in the inner room, I asked her to open the pocketbook which I had previously handed to her to let me see what it contained. Nothing was taken from the pocketbook. I and Special Agent Guilfoyle also searched what might be designated as a towel cabinet in the outer office. I also took some things from the desk in the inner office. All of these papers and the places from which they were taken are enumerated in the affidavit of Special Agents Guilfoyle and Delmore submitted herewith. A number of scraps of paper were taken from waste paper baskets both in the inner and outer office and were later pasted together as stated in the affidavit of Delmore.

The said deputy United States marshal informed said Lefkowitz that he had a warrant for his arrest prior to the time that said Lefkowitz was placed under arrest by the deputy United States marshal and prior to the time he was searched by Special Agent Delmore. At no time did the deputy United States marshal or any of the special agents inform Lefkowitz that we had a search warrant. No claim was made that we had any search warrant. The search was made incident to the arrest and not by virtue of any search warrant. At the time that I entered the room, I knew by reason of the aforesaid that said Henry Miller (Dan Lefkowitz) and the young lady, Pauline Paris, and others, were guilty of the crime of maintaining a nuisance in said room by selling and bartering liquor in said room, and that they were guilty of the crime of conspiracy to violate the national prohibition act; and the room was searched to discover the instruments of the crime and to seize evidence of the crime then being committed by the persons arrested.

Williams was arrested by one of the special agents; I think it was Special Agent Gaughan.

I have read the affidavit of Daniel M. Lefkowitz sworn to January 21, 1931. As above stated, I informed Lefkowitz that I was a Department of Justice agent and showed him my badge, but I didn't say that he was under arrest. He was told he was under arrest by the deputy marshal after I had identified him to the deputy marshal. I didn't tell Lefkowitz that I would explain to him what it was all about after a lawyer had been retained by Lefkowitz. The deputy marshal told him that he had a warrant of arrest and he had the warrant in his hand at the time. I didn't place

Mr. Williams under arrest and did not search his person. Williams was searched by one of the other special agents. Pauline Paris entered the room after Special Agent Delmore had started to search Daniel Lefkowitz, and I believe that Special Agent Delmore had completed the search of the person of Daniel Lefkowitz before Miss Paris entered the room, but I am not sure of this. No force was used in the search of the person of Daniel Lefkowitz as he did not resist after he was informed by the deputy marshal that the deputy marshal had a warrant for his arrest. At the time that Lefkowitz was searched, no remark was made by any of the special agents that he would slap Lefkowitz's face. Lefkowitz did not state to me that I had no right to search him and I did not search him. As a matter of fact, I was not in the inner office when he was being searched but I could see that he was being searched by looking through the entrance to the inner office. No stamps were taken from room 604 by me or any of the other special agents or the deputy marshal.

I have also read the affidavit of Pauline Paris, sworn to January 20, 1931. Upon my request, she did type the note referred to in the affidavit of Special Agent Guilfoyle. I did this partly with the bona fide intention of facilitating her early release on bail and also, of course, for the purpose of obtaining a sample of her typewriting when using the machine that was in said room 604, and also to obtain her signature. No force was used at any time and she did this voluntarily and told me that she was glad to do it as she did not wish to stay in jail that night. I called on the telephone Assistant United States Attorney Grant and did arrange with him to have Commissioner Cotter remain in his office in order that the prisoners could be arraigned and released on bail that night. We arrived at the commissioner's office shortly after 5 p. m., and the prisoners were arraigned and released on bail that evening.

While I was in the office, the telephone rang a number of times and I answered the telephone and the various parties calling refused to identify themselves but asked for sometimes "Dan" sometimes "Sam" and sometimes asked if the "girl" was there and in one case asked for what sounded to me like "Hyman." Every time the telephone rang, I was unable to get the conversation because of the shouting of the man now known to me as Lefkowitz trying to interfere with my conversation. It was because of his continuous interfering with the agents that Special Agent Delmore at one time told him that if he didn't stop shouting and interfering, he would slap his face.

J. RAY OLIVERA.

Sworn to before me this 29th day of January, 1931.

[SEAL.] CATHERINE M. CONLAN,
Notary Public.

Bronx County No. 61, Reg. 3117. Cert. filed in N. Y. Co. No. 155, Reg. No. 1C138. Commission expires March 30, 1931.

In United States District Court

[Title omitted.]

Affidavit of Thomas Guilfoyle, read in opposition to motion.

STATE OF NEW YORK,
County of New York, ss:

Thomas Guilfoyle, being duly sworn, deposes and says:

I am a special agent of the Department of Justice, Bureau of Prohibition, working under the supervision of Horace J. Simmons, special agent in charge, sub-Treasury Building, New York City.

On January 12, 1931, I was directed by Mr. Simmons to report to Assistant United States Attorney U. S. Grant, where I would meet Special Agents Gaughan, Delmore, and Olivera at Mr. Grant's office and that they would explain to me what part I was to take in a proposed arrest of Henry Miller and others and would inform me as to the facts of the case. I did report to Assistant United States Attorney Grant and met the said special agents at his office and was given by Mr. Grant a copy of a complaint that was sworn to on January 12, 1931, by Special Agent Olivera before Commissioner Cotter and I read this complaint. Special Agents Olivera and Delmore also showed me various papers, such as letters bearing the typewritten signature of Henry Miller and referring to orders for and shipments of liquor, a bank draft bearing the endorsements among others of "Henry Miller," and as a result of this information given to me, I was informed and believed at that time that the persons named in said complaint were engaged in an unlawful conspiracy to violate the national prohibition act and were then maintaining a nuisance at room 604 in the building 1547 Broadway by selling and bartering liquor in said room.

About 3.35 p. m. Deputy United States Marshal Harry Morgenstern came to the office of Assistant United States Attorney Grant and I was informed that he had a warrant for the arrest of the persons named in said complaint that had just been issued by United States Commissioner Garrett W. Cotter. I, in the company of said deputy marshal and the other special agents, went to the building 1547 Broadway and arrived there about 4 p. m. on January 12th to assist the said deputy marshal in affecting the arrest of the persons named in the said complaint and warrant of arrest. Special Agent Gaughan, the deputy marshal, and I proceeded to the fifth floor (while Special Agents Olivera and Delmore continued to the sixth floor) of this building by elevator and continued to the sixth floor via the rear stairway. Special Agent Olivera entered room 604, while the rest of us remained on the landing on the 6th floor with the exception of Delmore who took a position near the door to room 604 in order that he could signal us by a prearranged signal if he was notified by Special Agent Olivera,

by means of a prearranged signal, that the parties or any of them named in the complaint and the warrant of arrest were in said room. I was informed by Special Agent Olivera prior to going to said building that he had an appointment for 3 p. m. on January 19th with Henry Miller in said room 604 for the purpose of discussing a possible purchase of liquor by Special Agent Olivera from Henry Miller and that Special Agent Olivera had told a man known to him as Henry Miller that his, Olivera's, name was Manuel Negroni. It was for that reason that Olivera entered the room before the rest of us, as we did not wish to disclose the fact that the warrant of arrest had been issued if the persons named in the warrant of arrest were not present in the room.

Special Agent Olivera had not been in the room more than a few minutes when Special Agent Delmore came over to the rest of us and informed us that persons named in the complaint and warrant were present in the room, according to the signal he had received from Special Agent Olivera. We all thereupon entered said room 604.

On entering the door of room 604, I observed Special Agent Olivera talking with a man now known to me as Benjamin Williams. Benjamin Williams, accompanied by Special Agent Olivera, walked towards the inner office. At the entrance to the inner office, a man was standing, who Special Agent Olivera informed us was Henry Miller, and said Olivera said to us in substance that this man standing by the entrance to the inner office was Henry Miller, with whom he had negotiated for the purchase of liquor. Deputy Marshal Morgenstern thereupon informed this man Henry Miller, who I now know to be Daniel M. Lefkowitz, that he was a deputy marshal and that he had a warrant calling for his arrest, and he placed said Henry Miller under arrest. Said deputy marshal had the warrant of arrest in his hand at this time.

Special Agent Gaughan and said Williams were having a conversation. I saw Special Agent Gaughan take from the outside overcoat pocket of said Williams a package having the appearance of a bottle wrapped in brown paper. The paper was taken off and the bottle bore a label indicating that it was rye whiskey. Williams informed us that he had purchased this liquor elsewhere and had brought it to room 604 to drink it and that he intended to give the stenographer in this office some stenographic work and that he, Williams, was in the carnival business. There was another man present in the office who we allowed to leave as we had no evidence warranting his arrest or detention.

I observed Special Agent Delmore search the person of Henry Miller (Daniel M. Lefkowitz) and hand the various papers and articles taken from his person to Deputy Marshal Morgenstern. I and the other special agents immediately upon the arrest of Henry Miller, who I will hereinafter refer to as Daniel M. Lefkowitz, conducted a search of said room 604. Said room 604 is separated by

a partition into what might be designated as an inner and outer office.

I and Special Agent Olivera searched the desk which I believe was used by Pauline Paris, who was designated in the complaint and warrant of arrest as "Jane Doe." We took from this desk, which was in the outer office near the entrance to room 604, the following:

1. Black leather covered loose-leaf note book, containing alphabetical list of names and addresses.

2. An envelope marked room 604, 1547 Broadway, New York City, containing a 1929 New York State motor vehicle registration certificate 5 Y-2555, issued to Milton Hordish, 635 Kelly Street, Bronx, N. Y., for a 1929 Nash sedan.

3. A bill or statement amounting to $25 addressed to Herman Bernstein, c/o Bernstein & Lefkowitz, 1547 Broadway, New York City, apparently sent by doctors whose names appear on the statement.

4. Business card bearing the name of Dave Scherl, giving his address and telephone number and residence telephone number.

5. A number of business cards reading as follows:

Dan Lefkowitz — Herman Bernstein

LEFKOWITZ & BERNSTEIN
1547 Broadway
New York City

Chickering 4-8928 — Room 604

6. About 25 sheets of typewriter paper with the heading thereon of "William Salmon, 1547 Broadway, room 604."

7. About 75 envelopes addressed to various persons throughout the United States, some of which contained undated letters bearing the typewritten signature "William Salmon" to the effect that he had made his yearly change of name from "Henry Miller" to "William Salmon" and that he had received a new stock of merchandise that was for sale.

8. A cardboard covered loose-leaf binder, containing an alphabetical typewritten list of names and addresses.

9. A stenographer's note book and text book.

10. Three raffle books.

While we were searching the desk, a young lady entered the office and Special Agent Olivera informed me that she was the young lady designated as "Jane Doe" in the complaint and warrant of arrest. Later, the deputy marshal came from the inner office to the outer office and Olivera informed him that she was the person designated as "Jane Doe" in the warrant. This young lady was placed under arrest. I heard Special Agent Olivera inform this young lady, who I now know to be Pauline Paris, in substance that he was sorry that she being a woman was arrested and that he would try to arrange to have the commissioner remain in his office so that she could be released on bail that night and not have to spend the night

in jail. He also had other conversation with her which I did not hear. I did see her sit down at her desk and typewrite a note which reads as follows:

ULYSSES GRANT,
Post Office Bldg., New York City.

My dear Mr. GRANT: Since everything has gone fine, I would suggest that this girl whose name is signed below be left out as soon as bail is arranged for her.

Very truly yours,

J. RAY OLIVER.

(s) PAULINE PARIS.

I later heard Olivera call Assistant United States Attorney Grant on the telephone and ask if the commissioner would be available to arraign the prisoners and heard him state in substance that it was his desire that the young lady could be released on bail and not have to spend the night in jail.

Pauline Paris voluntarily typed this letter at the request of Special Agent Olivera without any threat or force whatsoever on the part of any of the Government men. It was apparently her idea to do this in order to facilitate her release on bail. It was, of course, undoubtedly the idea of Special Agent Olivera to obtain this typewritten note in order to compare the typewriting and the stenographer's touch as disclosed on the typewritten letter with other papers found in the office and to obtain the signature of Miss Paris. He, however, at no time made any threat whatsoever to Miss Paris and actually did facilitate her early release on bail by calling Mr. Grant on the telephone and by arranging to have the prisoners taken before the commissioner as soon as possible.

I would judge that it was between 5 and 10 minutes after we first entered room 604 that Pauline Paris entered the room. In the meantime, Special Agent Olivera and myself had also searched in the outer office what I would designate as a towel cabinet. The door to this cabinet was not locked and is the usual type of cabinet with a mirror in the door and is about 15" x 12" in size. Under some towels we found several typewritten loose leaf sheets unbound bearing names and addresses of numerous people throughout the United States. Special Agent Olivera and myself also took from a waste paper basket in this outer office a number of papers and scraps of paper. No desk or cabinet was broken into by us, as all the doors to the desk and the door to the cabinet were unlocked.

Other papers and articles were found by the other special agents in room 604, including a bottle containing alcohol, but, since I didn't find these articles in the first instance, I will not enumerate them in this affidavit.

This affidavit is made by me to be submitted to the court in opposition to an application by Daniel M. Lefkowitz and Pauline Paris for the suppression as evidence of the papers and articles seized in

room 604 and the return of said articles and papers to Daniel M. Lefkowitz.

THOMAS GUILFOYLE.

Sworn to before me this 24th day of January, 1931.

[SEAL.] CATHARINE M. CONLAN,
Notary Public.

Bronx County No. 61, Reg. 3117. Cert. filed in N. Y. Co. No. 155, Reg. No. 1C138. Commission expires March 30, 1931.

In United States District Court

[Title omitted.]

Affidavit of Joseph M. Hugo, read in opposition to motion

CITY OF NEW YORK,
County of New York, ss:

Joseph M. Hugo, being duly sworn, deposes and says:

I am a special agent of the Department of Justice, Bureau of Prohibition, and I am at present a special agent in charge at the branch office located at Buffalo, New York.

On or about July 9, 1930, I was assigned by H. J. Simmons, the special agent in charge at New York City, to investigate a complaint received through the Director of Prohibition from a citizen of Oklahoma with reference to the soliciting of orders for intoxicating liquors through the United States mail by a Henry Miller, who gave the address of 1547 Broadway, room 604, New York City. I was given several letters signed in typewriting by Henry Miller, addressed to C. F. Odell, Davenport, Oklahoma, with reference to a price list of liquor and requesting orders for liquor. These letters had the letterhead "Henry Miller, 1547 Broadway, room 604, New York City," and one of the letters bore the date June 20, 1930. I also was furnished with various letters bearing a typewritten signature of B. & O. Novelty Company with a letterhead giving the address 1547 Broadway, New York City, and one of the letters with the Henry Miller letterhead had at the bottom "formerly the B. & O. Novelty." I also was furnished with several price lists of liquor which, I was informed, had been sent through the mails to said C. F. Odell by B. & O. Novelty Company and Henry Miller.

I thereupon, under date of July 15, 1930, wrote from Buffalo, New York, a letter addressed to Henry Miller, room 604, 1547 Broadway, New York City, and signed in typewriting "Anthony Craig," to the effect that I had been referred to Henry Miller by C. F. Odell and requested that a price list be sent to me. I received in reply a letter dated July 17, 1930, bearing the typewritten signature of Henry Miller and the letterhead "Henry Miller, 1547 Broadway, room 604, New York City," thanking me for my request and informing me that a price list would be sent under separate cover

and that the merchandise handled by Henry Miller was the finest obtainable in the New York market and urging me to order at once so as to take advantage of the new shipments on hand. I later received under separate cover a price list, which reads as follows:

Rye	85	French vermouth	50
Bourbon	85	Apricot brandy	85
Scotch	85	Cherry brandy	85
Bacardi	85	French brandy	85
Gin	85	Creme de minthe	85
Port	50	Creme de cocoa	85
Sherry	50	Champagne	85
Italian vermouth	50		

I thereupon, under date of July 19, 1930, wrote a letter to Henry Miller acknowledging receipt of the said letter and the price list and asked him to explain the procedure to be followed by me in ordering and in paying for the liquor. I received a reply from Henry Miller dated July 22, 1930, in which he informed me, among other things, that I should get a New York draft in advance covering the amount of any order I should send. I later received through the mails at Buffalo, New York, a letter or form announcement which reads as follows:

HENRY MILLER,
1547 Broadway, Room 604,
New York City,

DEAR PATRON: Let's all drink a toast to a better year of business for all concerned.

Now that you are back from your vacation, and I hope it was an enjoyable one, you want to keep up that glorious feeling.

I have been abroad on a shopping expedition and have brought back with me the best merchandise obtainable.

My business has steadily increased for three very good reasons—excellent service, reasonable prices, and above all, the finest quality of merchandise available. Give me an opportunity to prove to you the truth of these statements.

A revised price list will be sent to you upon request.

May I have the pleasure of serving you and your friends in the near future?

Thanking you for past favors, I remain,

Very truly yours,

HENRY MILLER.

I thereupon, under date of September 26, 1930, wrote to Henry Miller requesting the revised price list. I received a reply under date of September 30, 1930, and by separate cover a revised price list, which reads as follows:

Rye	75	French vermouth	50
Bourbon	75	Creme de minthe	75
Scotch	85	Creme de cocoa	75
Gin	85	Apricot brandy	75
Bacardi	85	Cherry brandy	75
Port	50	French brandy	75
Sherry	50	Champagne	85
Italian vermouth	50		

I later received a letter from Henry Miller dated October 23, 1930, urging me to send an order at once. Under date of October 27, 1930, I sent a letter to Henry Miller and inclosed a draft for $55.00, a copy of which letter reads as follows:

1007 Morgan Bldg.,
Buffalo, N. Y., October 27, 1930.

Mr. HENRY MILLER,
1547 Broadway, Room 604,
New York, N. Y.

DEAR SIR: Inclosed herewith please find New York draft for $55.00, for which please send me immediately one case of Scotch whiskey to the above address.

I expect to use this liquor for the Halloween holidays, so I am asking you to ship it as soon as you get this letter so that it will arrive here by Thursday, October 30th.

Please acknowledge receipt and advise me when I shall expect the express shipment.

Very truly yours,

ANTHONY CRAIG.

I received a letter in reply under date of October 28, 1930, which reads as follows:

HENRY MILLER,
1547 BROADWAY, ROOM 604,
New York City, Oct. 28, 1930.

ANTHON CRAIG,
1007 Morgan Bldg., Buffalo, N. Y.

DEAR MR. CRAIG: Your check and order received for which I wish to thank you.

Merchandise leaves to-day.

Thanking you for past favors and hoping to be of further service to you and your friends, I remain,

Very truly yours,

HENRY MILLER.

Later I got in touch with the railway express agency at Buffalo, New York, and ascertained that two packages had arrived addressed to Anthony Craig. I thereupon seized these two packages. Upon examining the contents I ascertained that they contained bottles of Scotch whiskey. I tasted the contents of one of the bottles, and as I am familiar with the color, taste, and smell of intoxicating liquor, I know that the contents of the bottle I tasted was Scotch whiskey, containing more than one-half of one per cent of alcohol by volume, fit and intended for use for beverage purposes. I took a sample of the contents of these packages to the United States chemist, who reported that the sample was distilled spirits, fit for use for beverage purposes.

I thereafter, using the name of Anthony Craig, had further correspondence with said Henry Miller and informed him that I had

not received the Scotch whiskey ordered by me. I received a letter from Henry Miller dated November 5, 1930, which reads as follows:

HENRY MILLER,
1547 BROADWAY, ROOM 604,
New York City, Nov. 5, 1930.

ANTHONY CRAIG,
1007 Morgan Bldg. Buffalo, N. Y.

DEAR MR. CRAIG: Your letter received and contents carefully noted.

I am putting a tracer on the lost shipment and will let you know within a few days the result. Meanwhile should the merchandise arrive, I would appreciate if you would write and tell me.

Thanking you for past favors and hoping that everything will be satisfactory, I remain,

Very truly yours,

HENRY MILLER.

I wrote a letter addressed to Henry Miller purporting to introduce to him one Jose Hernandez and to authorize the delivery of the liquor which I claimed had not been received at Buffalo, New York, to said Hernandez. Using the name Jose Hernandez, I went to room 604, 1547 Broadway, New York City, on November 10, 1930. I saw a young lady, who I am now informed and believe to be Pauline Paris. I gave her this letter and told her that I was a friend of Anthony Craig from Buffalo, New York; that said Anthony Craig requested me to call at room 604, 1547 Broadway, New York City, and to inquire of Henry Miller regarding the delivery of a case of whiskey which Anthony Craig had ordered and for which Anthony Craig had sent a draft for $55.00. The girl, Pauline Paris, informed me that she would get in touch with Henry Miller and tell him that Jose Hernandez had called to find out regarding the case of liquor which had not been received by Anthony Craig at Buffalo, New York. Pauline Paris then informed me that Henry Miller would probably be in the office the next day and for me to come back to said office so as to take up the matter of the lost case of liquor for Anthony Craig with Miller directly.

On November 13, 1930, accompanied by Special Agent J. Ray Olivera, I called at room 604, 1547 Broadway, New York City, and again talked with the girl, Pauline Paris. I informed her that I wanted the case of liquor which was to be delivered to me in place of the one lost in Buffalo, New York, to be delivered to Special Agent J. Ray Olivera. Pauline Paris at that time informed me that she would take this matter up with Henry Miller and for me to leave an address where the case of liquor could be delivered in New York City. She stated that Henry Miller would not care to deliver the liquor in person, but that they would be glad to send this case by express to any address I may give her. Olivera's name was not given to Miss Paris.

On January 3, 1931, accompanied by Special Agent J. Ray Olivera, I again called at room 604, 1547 Broadway, New York City. When I again talked to Pauline Paris, I introduced Special Agent Olivera to her as Manuel Negroni. I then gave Pauline Paris the address of 2026 Morris Avenue, second floor, New York City, where the case of Scotch whiskey could be delivered. She promised me that this case would be delivered any time that Negroni would specify. I then informed Pauline Paris that Manuel Negroni would like to sell this whiskey to his friends and that if it would be possible for Henry Miller to lower his price so that Negroni could make a little profit out of the proposition. Pauline Paris said that she would make arrangements with Henry Miller for a meeting with Negroni in order to discuss lower prices for the purpose of buying wholesale from Miller. Paris stated that Negroni could see Henry Miller on January 5, 1931. At this time Pauline Paris wrote a telephone number on a piece of yellow paper, which she took from the drawer of her desk, the telephone number being Chickering 4-8928. She stated that I could call this number on January 5, 1931, to arrange for a meeting between Negroni and Henry Miller.

On January 12, 1931, I received a letter in Buffalo, New York, addressed to Anthony Craig, containing a special announcement. This letter was written on stationery with the letterhead "William Salmon, 1547 Broadway, room 604, New York City," and read as follows:

"WILLIAM SALMON,
"1547 BROADWAY, ROOM 604,
"*New York City.*

"SPECIAL ANNOUNCEMENT

"DEAR SIRS: I am sending this letter to inform you that I have changed my name to the above.

"It is customary for me to do this every year.

"I also take this means of telling you that I have received new shipments of very fine merchandise and I would like to have you take advantage of same.

"This merchandise is the finest quality obtainable in the New York market at the present time at the same low prices.

"Please remember to address all communications in the future to the above name.

"Thanking you for past favors and hoping to be of further service to you and your friends in the near future, I remain,

"Wishing you a happy, healthful, and prosperous New Year.

"Very truly yours,

"WILLIAM SALMON
"(Formerly HENRY MILLER.)

"P. S.—Please inform all your friends about the change of our name."

Prior to January 12, 1931, I had informed Special Agent Olivera of the foregoing facts and information known to me.

This affidavit is made by me to be submitted in opposition to an application by Daniel M. Lefkowitz and Pauline Paris for the suppression of all evidence obtained as a result of a search of premises room 604, 1547 Broadway, New York City, and for the return of papers and articles seized at the time of the arrest of said Daniel M. Lefkowitz and Pauline Paris.

JOSEPH M. HUGO.

Sworn to before me this 24th day of January, 1931.

[SEAL.] CATHARINE M. CONLAN,
Notary Public.

Bronx County No. 61, Reg. 3117. Cert. filed in N. Y. Co. No. 155, Reg. No. 1 C 138. Commission expires March 30, 1931.

In United States District Court

[Title omitted.]

Affidavit of Laurence Delmore, Read in Opposition to Motion

STATE OF NEW YORK,
County of New York, ss:

Laurence Delmore, being duly sworn, deposes and says:

I am a special agent of the Department of Justice, Bureau of Prohibition, working under the supervision of Horace J. Simmons, special agent in charge, Sub-Treasury Building, New York City.

A few days prior to January 6, 1931, I was informed by Special Agent Olivera that he had made arrangements whereby a case of Scotch whiskey would be delivered to him at an address in the Borough of Bronx, New York City, by a man, and that he, Olivera, had previously visited room 604 in a building known as 1547 Broadway and had arranged there with a man known to him as Henry Miller and a young lady in the office for the delivery of this whiskey which was to be delivered on January 6, 1931. Special Agent Olivera and myself went to the Bronx address on January 6, but the whiskey was not delivered.

On January 9, 1931, I went to the 6th floor of the building 1547 Broadway, New York City, and saw on the entrance to room 604 on a panel in the door the following:

The Southern Agency, D. M. Lefkowitz

A few days prior to January 12, 1931, I was informed by Special Agent Olivera that he had made an appointment to meet Henry Miller at room 604 in the building 1547 Broadway, New York, on

January 12, 1931, at 3.00 p. m. Special Agent in Charge Horace J. Simmons was kept informed by us as to the developments of the case and he advised us on January 10th to present the matter to the United States attorney. On January 12th Special Agent Olivera and myself went to the United States attorney's office and informed Assistant United States Attorney U. S. Grant as to all the facts known to us. I, at this time, had examined various letters bearing the typewritten signature of Henry Miller addressed to a C. F. Odell at Davenport, Oklahoma, with reference to price lists of liquor and soliciting orders for liquor. I also have been informed by Special Agents Olivera and J. M. Hugo with respect to the transaction between said Hugo using the name Anthony Craig and Henry Miller, and the order of a case of liquor to be sent to Buffalo and the seizure of the case of liquor that had been sent to Buffalo as a result of the order given to Henry Miller at room 604 in the building 1547 Broadway, New York City, by Special Agent Hugo, and the conversations had between Special Agent Olivera and the girl, whose name at that time I didn't know, and this man Henry Miller, which conversations are referred to in the complaint sworn to by Special Agent Olivera before Commissioner Garrett W. Cotter on January 12th. I now know the girl to be Pauline Paris and the man's real name to be Daniel M. Lefkowitz.

Assistant United States Attorney Grant, after being informed of the facts of the case, dictated a complaint in our presence and with our assistance. This complaint was sworn to by Special Agent Olivera before Commissioner Cotter and a warrant of arrest was issued to effect the arrest of the persons named in the complaint.

By reason of the aforesaid, prior to going to room 604 in the building 1547 Broadway, on January 12th, I was informed and believed that the said Daniel Lefkowitz, whose real name I did not at that time know, and the said girl, Pauline Paris, whose name at that time I did not know, and the other persons named in the said complaint were engaged in an unlawful conspiracy to violate the national prohibition act and were maintaining a nuisance in said room 604 by the use of said room for the sale and bartering of intoxicating liquor.

The warrant of arrest was delivered to the acting United States marshal, and Deputy Marshal Morgenstern was assigned to execute the warrant. He and myself and Special Agents Olivera, Gaughan, and Guilfoyle left the Federal building about 3.35 p. m. and went to 1547 Broadway, New York City. Said Deputy Marshal Morgenstern had in his possession the warrant of arrest and the special agents accompanied him to assist him and to identify the persons named in the warrant of arrest.

Entering the building at 1547 Broadway at about 4.00 p. m., we proceeded by elevator to the 5th floor, where U. S. Deputy Marshal Morgenstern and Special Agents Gaughan and Guilfoyle got off.

Agent Olivera and I continued to the 6th floor and I saw him enter room 604, and as he entered he took off his hat, thus notifying me that the persons we expected to find were in that room. I immediately went down the stairs to the 5th floor returning again to the 6th floor via the rear starway and finding at the head of the stairs the marshal and the other special agents. We all then entered room 604. From the time that Olivera entered room 604 until the rest of us entered, it was probably not more than two minutes. As I entered room 604, a man who later identified himself as Benjamin Williams was just leaving. I asked him to step back into the office and Agent Gaughan then questioned him. I heard Agent Olivera tell the marshal that the man who was standing at the door of the partition was Henry Miller. The marshal asked Miller to step into the inner office where he placed Henry Miller under arrest. At this time I was not sure that this man's correct name was Henry Miller. I, therefore, said to him, "Give me your correct name," and he said that he was Daniel Fefkowitz. I said, "Are you Daniel or Sam Fefkowitz," and he said, "No; Sam is my brother." I thereupon searched Henry Miller (Daniel Lefkowitz) and found in his pockets the following miscellaneous assortment of papers:

One wallet containing the following:

2 blank envelopes.
1 telephone book containing 1 address.
5 pieces of paper (initialed JAP).
26 yellow order slips.
27 white order slips.
4 white order slips.

One pocket wallet containing the following:

17 business cards, Lefkowitz & Bernstein.
1 lodge card, Consistory of New York City 32.
1 " " Ceba Lodge, No. 954.
1 " " Tall Cedars of Lebanon.
1 " " Mecca Temple.
3 small photographs.
1 pawn ticket.
1 operator's license.

And also the following not in the wallets:

1 Yale key.
1 check for $211.75.
1 letter dated Jan. 8, 1931.
1 letter dated Dec. 30, 1930.
3 yellow letters dated Jan. 5, 1931, and Jan. 9, 1931.

Also a Sargent key, No. 604, which I tried in the lock of the door to room 604 and found that it was the proper key. All of the papers and key were placed in an envelope on which Mr. Lefkowitz wrote his name. This envelope was given to the marshal.

Lefkowitz asked me on several occasions while I was in room 604 and also while in the subway if I couldn't fix the case so that he would not be prosecuted because he was only operating on a small scale. He told me it would be worth my while and said that if I needed any whisky, he would be glad to send me a case if I would return to him a check for $211.75 that I had taken out of his pocket. I told Lefkowitz that I was a Government agent and that anything he said could be used against him, and if he were not careful, the marshal would place him under arrest for bribery.

A woman, who later identified herself to me as Pauline Paris, had entered the office between 5 and 10 minutes after we first entered the office and I asked her to give me some information in reference to her business in the office. I told her that it was her privilege to either answer my questions or refuse, as the law gave her that choice. She stated that she had no objection to making a statement in reference to her name, occupation, and address, but did not desire at that time to make any further statement. While I was questioning her, Lefkowitz kept interrupting our conversation, some of his remarks being addressed to Pauline Paris and being of a nature that would tend to distort her statements to me. After questioning Miss Paris, I questioned the man whom I had met as I entered room 604, and he told me that his name was Benjamin Williams. He said that he was just a visitor in room 604. Agent Gaughan showed me a bottle of whisky which he said was taken from the pocket of Mr. Williams.

After questioning Mr. Williams, I informed Mr. Lefkowitz that I desired him to make a statement but that he need not unless he so desired, as he could stand on his constitutional rights and refuse to answer any of my questions. He, therefore, refused to answer any of my questions with the exception that he told me he resided at 698 West End Avenue, New York City. (He later gave his bondsman his home address as 670 West End Avenue, New York City.) I asked Lefkowitz if he knew Agent Olivera, and he said, "Yes, I remember him. I've been suspicious of him and thought he was a Federal man when he was in here before. I even told the stenographer that he looked suspicious." During the course of my conversation with said Lefkowitz, he referred to the aforementioned appointment he had with Special Agent Olivera by stating to me "I expected him at 3 o'clock," and he further said that he would have had more confidence in Olivera if he had kept the appointment and allowed the deal for the five cases of liquor to go through. Later, in the subway, Lefkowitz said to me in substance that Olivera would have a hard time proving that he was Henry Miller, but that if Olivera had let the five cases go through, it would have been easy to establish Lefkowitz's identity as Miller, as he would then have complete confidence in Olivera.

While in room 604 Agent Olivera showed me a typewritten letter addressed to Mr. Grant, assistant U. S. attorney, with the name Pauline Paris written thereon. He said Pauline Paris had typewritten it at his request. Agent Olivera handed me the contents of two waste-paper baskets while we were in room 604, and later at the office of the special agents I pieced some of the torn scraps of paper together, these being listed as follows:

Edison Company electric light bill from October 31 to December 3, 1930, for room 604 at 1547 Broadway, reading No. 6223, bill addressed to Herman Bernstein at 1547 Broadway.

Edison Company electric light bill from December 3, 1930, to January 5, 1931, for room 604 at 1547 Broadway, reading No. 6248, bill addressed to Herman Bernstein at 1547 Broadway.

Unsigned letter from Lefkowitz & Bernstein, 1547 Broadway, to L. Lieberman, 34 E. 12th Street, New York City, for merchandise delivered, $80.

Some 32-odd salesmen's order slips for intoxicating liquor with customers' names and addresses.

N. Y. Telephone Co. receipt No. 6225 dated January 8, 1931, acknowledging having received from Daniel Lefkowitz sum of $14.26 for telephone service, Chic. 4-8928.

A pencil memorandum containing some 35 names with amounts set after the respective names, some of these names being Myers, Gordon, French, and K.

A pencil memorandum containing names with amounts set after the names, one of them being Dan, $537, the total amount of the memorandum being $1,497.95.

The deputy marshal accompanied by his prisoners and the special agents all proceeded to United States Commissioner Cotter's office, where the prisoners were arraigned and held for hearing.

I saw Agent Olivera search the desk in the inner office and from one of the drawers he took out a bottle partly full of alcohol, also a telephone address book containing names of persons and telephone numbers and a business card which was taken from one of the drawers in said desk. A blank order book with some of the slips torn out was also taken from one of the drawers of the desk by Special Agent Olivera. Several business cards of Bernstein & Lefkowitz were also taken from the desk.

I am informed by Special Agent Thomas F. Gaughan and believe that he is ill from lung trouble and must go to Saranac Lake immediately and is not available to make an affidavit in this case. I have obtained photostatic copies of the complaint sworn to by Special Agent Olivera on January 12th and of the warrant issued by Commissioner Cotter which photostatic copies are annexed hereto. At the time the warrant was executed it did not contain the true names of the defendants arrested or the name of Benjamin Williams

or the return of the marshal. The complaint did not contain the name of Benjamin Williams. The complaint and warrant was amended by Commissioner Cotter at the time of the arraignment of the defendants after their arrest on January 12th.

I read the affidavit of Daniel M. Lefkowitz sworn to January 21, 1931, and note several statements therein which are to my knowledge untrue. It is stated in said affidavit "Your deponent's person was then forcibly searched without his consent and over his objection. Deponent stated to the agents and particularly to Mr. Olivera that he had no right to search him. One of the agents retorted that the deponent should keep quiet or he would have his face slapped." I was the one who searched Daniel M. Lefkowitz after he had been informed by the deputy United States marshal that he had a warrant calling for his arrest. No force was used by me in searching Lefkowitz; he did not protest or resist, and he was not told that he would get his face slapped if he didn't keep quiet. Subsequent to the search of this person, I did tell him that I would slap his face if he didn't stop interfering with me in my questioning of Pauline Paris. I didn't really intend to slap his face, but I told him this in order to keep him quiet and to stop him from annoying me and the agents in the performance of their duties. That this remark was not passed at the time of the search of his person is shown by the fact that Pauline Paris in her affidavit states that she heard the remark made and Pauline Paris was not present at the time I started to search Daniel Lefkowitz, but came in the room later. Neither the deputy marshal nor the other special agents stated that they had a search warrant. The deputy marshal informed Daniel Lefkowitz that he had a warrant of arrest, but no claim was made that the agents or the deputy marshal had a search warrant. The search was made as an incident to the arrest. Daniel Lefkowitz also states in his affidavit that a check was obtained from the inner office. This check was taken by me from the person of Dan Lefkowitz, who, as a matter of fact, endeavored to hide this check by passing it from one hand to another behind his back and showing me each of his hands as being empty.

This affidavit is made by me to be submitted to the court in opposition to an application by Daniel M. Lefkowitz and Pauline Paris for the suppression as evidence of the papers and articles seized in room 604 and the return of said articles and papers to Daniel M. Lefkowitz.

LAURENCE DELMORE.

Sworn to before me this 28th day of January, 1931.

DAVID D. MARCUS,
Notary Public, N. Y. Co., #1077.

Complaint before Commissioner Cotter, annexed to affidavit of Laurence Delmore

Approved: Ulysses S. Grant, Assistant United States Attorney.
Before: Honorable Garrett W. Cotter, United States Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA

against

HENRY MILLER, "JANE DOE," THE SAID NAME BEING FICTITIOUS, "Richard Roe," the said name being fictitious, and "John Doe," the said name being fictitious, amended to include Benjamin Williams, defendants

Complaint. Section 37 U. S. C. C. and Act of October 28, 1919

STATE OF NEW YORK,
County of New York,
Southern District of New York, ss:

J. Ray Olivera, being duly sworn, deposes and says:

I am an officer, to wit, special agent of the Bureau of Prohibition, Department of Justice, attached to the office of the special agent in charge at New York city, and on information and belief charge:

That commencing on or about June 21, 1930, and continuing thereafter down to the present time, at the southern district of New York and within the jurisdiction of this court, Henry Miller and "Jane Doe," the said name being fictitious and her true name to the deponent is unknown (she being a young lady about 25 years of age, fair skinned, apparently Jewish, slender, and weights about 120 pounds, about 5′ 5″ in height, and her face is slightly pock-marked), and "Richard Roe," the said name being fictitious and his true name being to the deponent unknown (he being a man about 35 years of age, apparently Jewish, smooth shaven, fair skinned, about 5′ 11″ in height and heavy set), and "John Doe," the said name being fictitious and his true name being to the deponent unknown (he being a man about 40 years of age, apparently Jewish, rather short of stature and stocky in build, clean shaven and fair skinned), also Benjamin Williams, the defendants herein, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other and with divers other persons to the deponent unknown, to commit an offense against the United States, to wit, to sell, possess, transport, furnish, deliver, and to take orders for intoxicating liquor containing more than one-half of one per cent of alcohol by volume and fit and intended for use for beverage purposes without permits, and contrary to the provisions of and otherwise than as authorized by the act of Con-

gress of October 28, 1919, commonly known as the national prohibition act and acts amendatory thereof and supplemental thereto and regulations issued and promulgated under the provisions of said act.

It was a part of said conspiracy that the defendants Henry Miller, "Jane Doe," the said name being fictitious, "Richard Roe," the said name being fictitious, and "John Doe," the said name being fictitious, should solicit through the United States mails and by other means, from an office in room 604 in a building known as 1547 Broadway, New York city, the said defendants pretending to do a real estate business in said office under the name of "The Southern Agency—D. M. Lefkowit," which name appears on the outer door to said room, orders for intoxicating liquor from divers persons throughout the United States, and should arrange to have intoxicating liquor sent and delivered by express companies, automobiles, and other carriers to the purchasers of said liquor, to collect money in payment for said liquor, and to share in the proceeds of said illegal scheme.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, on or about June 8, 1930, at the southern district of New York and within the jurisdiction of this court, the defendant Henry Miller mailed and caused to be mailed a letter to C. F. Odell at the Davenport State Bank, Davenport, Oklahoma, a copy of which letter marked "Exhibit A" is annexed hereto and made a part hereof.

2. In pursuance of said conspiracy and to effect the objects thereof, on or about June 20, 1930, at the southern district of New York, and within the jurisdiction of this court, the defendant Henry Miller mailed and caused to be mailed a letter addressed to C. F. Odell at the Davenport State Bank, Davenport, Oklahoma, a copy of which marked "Exhibit B" is annexed hereto and made a part hereof.

3. In pursuance of said conspiracy and to effect the objects thereof, on or about January 3, 1931, in room 604 of the building known as 1547 Broadway, borough of Manhattan, city, county, State, and southern district of New York, and within the jurisdiction of this court, the defendant "Jane Doe" had a conversation with deponent with reference to a past delivery of liquor by defendants to a special agent using the name Anthony Craig and with reference to prices of liquor that could be furnished by defendants and possible future deliveries of liquor to deponent.

4. In pursuance of said conspiracy and to effect the objects thereof, on or about January 5, 1931, at said room 604 of the building known as 1547 Broadway, in the southern district of New York, the defendant Henry Miller in the presence of the defendants "Richard Roe" and "John Doe" had a conversation with deponent with reference to a past delivery of liquor by defendants to a special agent

using the name Anthony Craig at Buffalo, New York, and a possible future shipment of liquor to deponent who, at that time, used the name of Manuel Negroni.

5. In pursuance of said conspiracy and to effect the objects thereof, on or about January 7, 1931, at the southern district of New York and within the jurisdiction of this court, the defendants transported and caused to be transported one case of Scotch whiskey containing more than one-half of one per cent of alcohol by volume and fit and intended for use for beverage purposes.

6. In pusuance of said conspiracy and to effect the objects thereof, on or about January 9, 1931, at the southern district of New York and within the jurisdiction of this court, the defendant "Richard Roe" had a telephone conversation with deponent with reference to past deliveries and possible future sales and deliveries by the defendants to deponent of intoxicating liquor from defendants.

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

The sources of deponent's information and the grounds of his belief are an official investigation made by him in the course of his official duties in the the course of which investigation he ascertained and now has knowledge of the following:

I have examined a letter sent by a resident of the State of Oklahoma under date of June 28, 1930, to the Director of Prohibition informing him of various correspondence passing between the defendant Henry Miller, the B. & O. Novelty Company, and a Mr. C. F. Odell, formerly vice president of the Davenport State Bank at Davenport, Oklahoma, during the year 1927 and certain letters, copies of which marked "Exhibits A and B" are annexed hereto, addressed to C. F. Odell by the defendant, Henry Miller. I have read the correspondence referred to, which is at the present time in my possession, and said correspondence, aside from the letters, copies of which are annexed hereto, consists of letters from the B. & O. Novelty Company soliciting orders for intoxicating liquor from C. F. Odell and price lists sent to C. F. Odell and shipments of liquor to C. F. Odell and others by the B. & O. Novelty Company located at the time of this correspondence at 1547 Broadway, New York City. I have also read official reports of Special Agent J. M. Hugo and have talked personally with J. M. Hugo and have been informed by him that he, using the name of Anthony Craig, had various correspondence with Henry Miller, which correspondence is at the present time in my possession and consists of letters from Henry Miller soliciting orders for intoxicating liquor from said Hugo using the name of Anthony Craig, letters referring to a shipment of liquor made by Henry Miller to Anthony Craig on or about October 28, 1930, and a copy of one of which letters marked "Exhibit C" is annexed hereto and made a part hereof. Said Special Agent Hugo informed me that he had made the said purchases of

intoxicating liquor using the name Anthony Craig and that he had received at Buffalo, New York, twelve (12) bottles of Scotch whiskey. I have examined a report of the chemist in charge at New York City with reference to an analysis made of the contents of one of said bottles, said report showing it to be distilled spirits fit for use as a beverage.

I also have examined a photostatic copy of a blank draft which said Special Agent Hugo informed me he sent to said Henry Miller in payment for said liquor and the name "Henry Miller" appears on said draft as one of the endorsers of said draft.

At various times during the present month of January, 1931, I have had conversations with the defendant, Henry Miller, with reference to said shipment of liquor to Anthony Craig and with reference to possible future shipments of liquor to me. At the time of these conversations, I used the name Manuel Negroni. Said Henry Miller has acknowledged to me that he received the order for this liquor from Anthony Craig. I and Special Agent Hugo pretended to Henry Miller that said liquor had not been received, and I arranged with the defendants, Henry Miller and "Jane Doe," for a shipment to be made to me as a representative of Anthony Craig at New York City in the place of the said shipment of liquor that had been made to Buffalo which was represented by us as having been lost. A shipment of intoxicating liquor was made to a certain address in the southern district of New York by defendants, the identity of the persons actually transporting the liquor being to the deponent unknown. Said liquor was seized and a chemical analysis made by the United States chemist in charge at New York City shows it to be intoxicating liquor containing more than one-half of one per cent of alcohol by volume and fit for beverage uses. I tasted some of said liquor and am familiar with the taste, color, and odor of whiskey and distilled spirits, and know that what I tasted was intoxicating liquor fit for use for beverages purposes.

At the time of one of my conversations with Henry Miller in room 604 in the building known as 1547 Broadway, New York City, the defendants "John Doe" and "Richard Roe" were present and must have overheard most of the conversation and while I was in the office at that time, I overheard the defendant "Richard Roe" ordering, after consulting the defendant Miller with reference to the order, three cases of liquor over the telephone from some one whose identity is unknown to me. During one of my conversations with the defendant "Jane Doe," she informed me that she could take orders for intoxicating liquor from me.

On the outer door to said room 604, I saw as late as January 5, 1931, the following warning:

The Southern Agency
D. M. Lafkowit

The "D" in front of the M. Lafkowit is somewhat scratched, giving it the appearance of a "C," but I believe it was intended to be a "D."

I have also made other investigations and the facts ascertained by me support the charge herein that the said defendants are engaged in a conspiracy to violate the national prohibition act.

Wherefore deponent prays that a warrant may issue for the apprehension of the said defendants and that they may be imprisoned or bailed as the case may be.

J. RAY OLIVERA,
Special Agent, United States Department of Justice.

Sworn to before me this 12th day of January, 1931.

GARRETT W. COTTER,
United States Commissioner for the Southern District of New York.

A true copy.

GARRETT W. COTTER,
United States Commissioner for the Southern District of New York.

Exhibit A, annexed to complaint before Commissioner Cotter

HENRY MILLER,
1547 BROADWAY, ROOM 604,
New York.

DEAR SIR: Not having heard from you in some time, we are taking this means of informing you of the new supply of choice merchandise consisting of both foreign and domestic brands. This merchandise is far superior to any that we have ever offered to you.

We are notifying our oldest customers first so as to give them the advantage of obtaining some before our supply is exhausted. Let your friends know of this so that they, too, can benefit by it.

Thanking you for past favors and hoping to be of further service to you in the very near future, I remain,

Very truly yours,

HENRY MILLER,
(Formerly the B. & O. Novelty.)

Exhibit B, annexed to complaint before Commissioner Cotter

HENRY MILLER,
1547 BROADWAY, ROOM 604,
New York, June 20, 1930.

C. F. OUELL,
The Davenport State Bank,
Davenport, Okla.

DEAR SIR: Your request received, for which I wish to thank you. I am sending you my price list under separate cover. The merchandise I handle is the finest obtainable in the New York market

and I would advise you to order immediately so as to take advantage of the new supply I have on hand.

Thanking you for past favors and hoping to be of further service to you in the near future, I remain,

Very truly yours,

HENRY MILLER.

Exhibit C, annexed to complaint before Commissioner Cotter

HENRY MILLER,
1547 BROADWAY, ROOM 604,
New York City, Oct. 28, 1930.

ANTHON CRAIG,
1007 Morgan Bldg.,
Buffalo, N. Y.

DEAR MR. CRAIG: Your check and order received, for which I wish to thank you.

Merchandise leaves to-day.

Thanking you for past favors and hoping to be of further service to you and your friends, I remain,

Very truly yours,

HENRY MILLER.

Warrant of arrest, annexed to affidavit of Laurence Delmore

The President of the United States of America

To the marshal of the United States for the Southern District of New York, and to his deputies, or any or either of them:

Whereas complaint on oath hath been made to me, charging that Henry Miller, "Jane Doe," "Richard Roe," "John Doe" did on or about the 21st day of June in the year one thousand nine hundred and/30 at the southern district of New York (Offense. Vio. Sec. 37 U. S. C. C.) as set forth in the complaint this day filed in my office, a certified copy of which is hereto attached, and made a part hereof, against the peace of the United States and their dignity, and against the form of the statute of the United States in such case made and provided, act 10/28/19.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said defendants and bring their bodies forthwith before me, or some judge or justice of the United States, wherever in the southern district of New York they may be found that they may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 12th day of January in the year of our Lord one thousand nine hundred and/31.

GARRETT W. COTTER,
United States Commissioner
for the Southern District of New York.

U. S. District Court, Southern District of New York. The United States of America *v.* Henry Miller, Daniel Lefkowitz, $3,000; Jane Doe, Pauline Paris, $1,000; John Doe, Richard Roe, Benjamin Williams, $500. Warrant to apprehend. Garrett W. Cotter, U. S. Commissioner, S. D. N. Y.

I hereby depute Harry Gargachan to execute the within process. Dated, New York, Jan. 12, 1931. R. J. Mulligan, U. S. Marshal.

Received this warrant 12th day of January, 1931, at New York City and executed the same by arresting the within named Henry Miller and Daniel Lefkowitz, Pauline Paris, Benjamin Williams at New York City, on the 12th day of January, 1931, and have their bodies now in court, as within I am commanded. R. J. Mulligan, U. S. Marshal, S. D. N. Y.

Defendants Lefkowitz arraigned 1/12/31; hearing 2/10/31, $2,000; Pauline Paris, $1,000; Williams, $500. Garrett W. Cotter, U. S. Commissioner.

Defendants gave bail 1/12/31. Garrett W. Cotter, U. S. Commissioner.

In United States District Court, Southern District of New York

IN THE MATTER OF THE APPLICATION OF DANIEL M. LEFKOWITZ, FOR the suppression of any and all evidence of whatever nature, obtained directly or indirectly by reason of a search of premises room #604 in #1547 Broadway, in the Borough of Manhattan, City and State of New York, and for the return of all books, papers, correspondence and all other papers and records belonging to the said Daniel M. Lefkowitz, et cetera.

M 13/367

Opinion of Caffey, U. S. D. J.

Counsel have presented the issues with commendable frankness and in a co-operative spirit. They disagree as to the significance to be attributed to Go-Bart Importing Co. *v.* United States, 51 Sup. Ct. 153; 75 L. ed. 185. They want a square ruling as to its effect. As I understand, whoever the loser, there will be a review of my order. The matter is important to citizens, as well as to law officers. All should know where they stand. Accordingly, I have been over the motion papers and the authorities with such care as was practicable in the limited time available and shall render a prompt

decisions though, in view of the prospective appeal, I see no need for extended discussion.

The complaint charges a felony under section 37 of the Criminal Code and section 21, Title II of the national prohibition act. (18 U. S. C. A., sec. 88; 27 *Ibid.*, sec. 33.) The warrant directed the marshal to arrest for this felony the petitioner Lefkowitz (under the name of Henry Miller) and the petitioner Paris (under the name Jane Doe). The Government agent who verified the complaint had personal knowledge which afforded reasonable ground for believing that the petitioners were maintaining and were conspiring among themselves and others to maintain a nuisance, in violation of the Volstead Act, in room 604 at 1547 Broadway, Borough of Manhattan. In addition, in advance of taking the oath, the agent had information to the same end from others, who had personal knowledge of the commission and continuance of the offense by the petitioners, and from various substantiating documents in his possession.

I think on the proof the following are plainly established: The complaint and the warrant of arrest based thereon were regular and sufficient. The petitioners were properly and lawfully arrested by a deputy marshal pursuant to the authority vested in him and the duty imposed on him by the warrant. Room 604 was the place in which the arrest was made and the papers, whose return is sought, were located. This place constituted but single premises, consisting of the so-called inner and outer offices, in which the offense was being committed. The offense charged in the complaint was actually in progress and was being participated in by both petitioners, in room 604, at the time they were arrested. None of the papers were seized until after the execution of the warrant. Omitting for the moment the letter typed by Paris, part of the papers (specifically identified in the affidavits) were taken from the person of Lefkowitz and the remainder from the premises, where the arrest occurred, as an incident thereto. Save as to those already redelivered to petitioners, all the documents would be material evidence at the trial of the indictment which resulted from the arrest.

The seizure as an incident, during the course and within the place of a lawful arrest for a felony of papers found on the person arrested (Agnello *v.* United States, 269 U. S. 20), as well as of papers on the premises where the arrest was made which were either contraband (Carroll *v.* United States, 267 U. S. 132) or were then being employed in carrying on the criminal enterprise for which the arrest was made (Marron *v.* United States, 275 U. S. 192), is lawful.

The United States attorney has produced all the seized papers (except those previously returned) and I have examined them. Within the authorities cited above I discover none whose retention by the prosecuting officer I regard as unlawful.

I think that, upon application of common sense, the conclusion is inescapable that each paper taken was, within the meaning of sections 21 and 22 of Title II of the prohibition act (27 U. S. C. A.,

secs. 33 and 34), "property kept and used in maintaining" was located in the place where there was being maintained and was a thing "used in connection with the violation * * * constituting" the nuisance denounced by the law. The physical presence of intoxicating liquor in room 604 was not essential to the commission there of the crime, charged in the complaint, for which the arrest was made. The place could be a nuisance although there was never actually any liquor on the premises. Within the statute, liquor could be sold there, though deliveries were made elsewhere. Moreover, for the present purpose it is enough if the conspiracy was there or the petitioners or their associates had any of them gathered in the room to conduct the conspiracy or do any act to effect its object.

It might well follow that, in the sense of the word as used in the Carroll case, supra, the seized papers were contraband. It is not necessary, however, to determine that, for the reason that, at least within the Marron case, all the papers were but usual and ordinary means of carrying on a business of the character presented here.

Much stress was laid in argument on the Go-Bart case. Each side claimed to benefit by it. I think, however, that what was there said is to be confined to the facts then under consideration and that it has no pertinency to the facts in the case at bar. I feel strongly that it was not the intention of the Supreme Court to depart from well settled principles, theretofore announced by it in a long line of decisions. At any rate, I am unwilling to construe the case otherwise unless constrained thereto by the court of appeals for this circuit.

I am satisfied that the letter addressed to the assistant United States attorney, referred to in the affidavit of the petitioner Paris, was voluntarily typed and signed by her. Though doubtless she did not suspect the use as evidence for which it was designed by the Government agent who obtained it, she readily fell in with his suggestion, with the purpose on her part of securing arraignment and bail before the United States commissioner left his office for the day and thereby to escape confinement in jail over night. It is immaterial that the agent had an ulterior motive. He employed no force and he was not guilty of any such surreptitious or prohibited device as that which Couled *v.* United States, 255 U. S. 298, held tainted evidence so as render it inadmissible. On the contrary, what was done by the agent, being free from force, was well within the realm which, in United States *v.* Maresca, 266 Fed 713, 718–19, Judge Hough said was open to law officers in procuring evidence.

All the papers were put into the hands of the deputy marshal at the time of the arrest. He delivered them to the United States attorney, who still holds them. There is no occasion therefore for making anybody except the United States attorney a respondent in this proceeding. (United States *v.* Gowen, 40 Fed. [2d] 593, 598; United States *v.* Maresca, supra.) Moreover, there is no justi-

fication for continuing a stay against others named in the order to show cause, none of whom is in possession of any of the papers or has been served with process. (United States *v.* Mahon, 42 Fed. [2d] 571, and cases cited.)

There is some dispute as to whether there was consent, express or implied, by petitioners or either of them to the search of the premises after the arrest. I should be unwilling to find that they did consent without an oral hearing at which the witnesses can be fully cross-examined. If such a hearing be desired, it may be obtained by placing the matter on the calendar of the criminal part for February 20. If that time be not convenient; another date will be arranged.

The application by the United States attorney at the oral argument on the 10th instant for a modification of the existing stay is granted. An order (to be settled on one day's notice) may be taken vacating the stay except as against the United States attorney using the seized papers as evidence in a trial of the petitioners or either of them previous to ten days after the entry of an order hereon and, if during that period an appeal be taken, until after determination of the appeal.

Motion denied. Settle order on two days' notice.

Dated, February 13, 1931.

FRANCIS G. CAFFEY,
U. S. D. J.

In United States District Court

[Title omitted.]

Order Amending Title of Proceeding

February 17, 1931

Upon the stipulation and consent of David P. Siegel, attorney for the petitioners, and the United States attorney, by Ulysses S. Grant, assistant United States attorney, of counsel, the attorneys for the respective parties herein orally made before me at the time of the argument of the motion brought on to be heard before me on February 10, 1931, by an order to show cause issued upon the application of Daniel M. Lefkowitz and Pauline Paris, the petitioners herein, for an order directing the return of certain papers seized at the time of the arrest of the petitioners on January 12, 1931, and for the suppression of their use as evidence; it is

Ordered that the title of this proceeding be and the same hereby is amended so as to include the name of Pauline Paris as one of the petitioners herein.

FRANCIS G. CAFFEY,
U. S. D. J.

In United States District Court, Southern New York

IN THE MATTER OF THE APPLICATION OF DANIEL M. LEFKOWITZ AND Pauline Paris, for the suppression of any and all evidence of whatever nature, obtained directly or indirectly by reason of a search of premises room #604 in #1547 Broadway, in the Borough of Manhattan, City and State of New York, and for the return of all books, papers, correspondence and all other papers and records belonging to the said Daniel M. Lefkowitz, et cetera.

UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, respondent

M 13/367

Order Appealed From

February 17, 1931

A motion by Daniel M. Lefkowitz and Pauline Paris, the petitioners herein, made by an order to show cause directed to the United States attorney, and signed by Honorable Henry W. Goddard, a United States district court judge, on January 21, 1931, for an order for the suppression of any and all evidence of whatever nature obtained directly or indirectly by reason of a search of premises room #604, in #1547 Broadway, in the Borough of Manhattan, City of New York, on the 12th day of January, 1931, and for the return of all books, papers, correspondence and other papers, records and things belonging to the said Daniel M. Lefkowitz, and why an order should not be made herein for such other and further relief as to this court may seem just and proper, duly came on to be heard before me on February 10, 1931, the motion having been adjourned to that date;

And the affidavit of Daniel M. Lefkowitz, sworn to January 21, 1931, and the affidavit of Pauline Paris, sworn to January 20, 1931, having been submitted in support of said motion; and the affidavits of Ulysses S. Grant, sworn to January 31, 1931; Harry Morgenstern, sworn to January 28, 1931; J. Ray Olivera, sworn to January 29, 1931; Thomas Guilfoyle, sworn to January 24, 1931; Joseph M. Hugo, sworn to January 24, 1931, and Laurence Delmore, sworn to January 28, 1931, and the papers and things seized by the Government officers in room 604 in the building 1547 Broadway, Borough of Manhattan, City and State of New York, at the time of the arrest of the petitioners in said room on January 12, 1931, with the exception of the papers that have heretofore been returned to the petitioner Daniel M. Lefkowitz by the United States attorney, as appears in the said affidavit of Ulysses S. Grant, all of which papers and things are referred to and enumerated in the said affidavits

submitted in opposition to said motion, having been presented in opposition to said motion;

Now, upon hearing David P. Siegel, Esq., attorney for the petitioners, in support of said motion, Robert E. Manley, Esq., the then acting United States attorney by Ulysses S. Grant, assistant United States attorney, of counsel, in opposition to said motion, and upon reading the said order to show cause, affidavits, and papers and things submitted in support of and in opposition to said motion; and due deliberation having been had and the opinion of the court filed; and George Z. Medalie, Esq., having, since the argument of said motion, been sworn in as United States attorney for the southern district of New York; it is

On motion of George Z. Medalie, Esq., United States attorney for the southern district of New York,

Ordered and adjudged that the petitioners' said motion for the return of seized books and papers, et cetera, and the suppression of their use as evidence be, and the same hereby is, denied; and that this proceeding be, and the same hereby is, dismissed; and it is further

Ordered that the execution of this order be stayed for a period of ten (10) days from the entry hereof, and if an appeal be taken within said ten (10) day period, then pending the determination of the appeal to the extent and only to the extent provided in the order signed by me and heretofore entered herein modifying the stay included in said order to show cause signed by Judge Henry W. Goddard on January 21, 1931, to wit, that the United States attorney be, and he hereby is, for the period herein stated, stayed from using the papers and things seized by the Government officers in room 604 of the building 1547 Broadway, Borough of Manhattan, City and State of New York, at the time of the arrest of the petitioners in said room on January 12, 1931, as evidence in a trial of the petitioners or either of them.

FRANCIS G. CAFFEY,
U. S. D. J.

In United States District Court

[Title omitted.]

Order modifying stay

Feb. 17, 1931

An order to show cause having been issued herein upon the application of Daniel M. Lefkowitz and Pauline Paris, the petitioners herein, on January 21, 1931, by Honorable Henry W. Goddard, a United States district court judge, directed to the United States attorney for the southern district of New York, upon the affidavits of the said petitioners and providing that the United States attor-

ney show cause at a stated term of this court on January 26, 1931, why an order should not be made herein for the suppression of any and all evidence of whatever nature, obtained directly or indirectly by reason of a search of premises room #604 in #1547 Broadway, in the Borough of Manhattan, City of New York, on the 12th day of January, 1931, and for the return of all books, papers, correspondence, and other papers, records, and things belonging to the said Daniel M. Lefkowitz, and why an order should not be made herein for such other and further relief as to this court may seem just and proper; and a stay having been included in said order to show cause providing that—

"And in the meantime and pending the hearing and determination of this motion and the entry of an order thereon, the United States attorney, any and all agents of the Department of Justice, any and all agents of the Treasury Department, the United States marshal for the southern district of New York and/or his deputies are hereby stayed from using the evidence sought to be suppressed herein for any purpose whatsoever as well as any information directly or indirectly gained therefrom"; and

Petitioners' said motion having been brought on by said order to show cause to be heard before me on February 10, 1931, the motion having been adjourned to that date, and said motion having been argued by David P. Siegel, Esq., attorney for the petitioners, and Robert E. Manley, the then acting United States attorney by Ulysses S. Grant, assistant United States attorney, of counsel, for the respondent United States attorney, and the affidavits of Ulysses S. Grant, sworn to January 31, 1931; Harry Morgenstern, sworn to January 28, 1931; J. Ray Olivera, sworn to January 29, 1931; Thomas Guilfoyle, sworn to January 24, 1931; Joseph M. Hago, sworn to January 24, 1931; and Laurence Delmore, sworn to January 28, 1931, and the papers and things seized in said room 604 and referred to in said affidavits, having been presented in opposition to said motion; and at the argument of said motion, the United States attorney, by Ulysses S. Grant, assistant United States attorney, of counsel, having moved upon said affidavits and papers, said order to show cause and all the proceedings heretofore had herein, that the said stay included in said order to show cause be modified pending the determination of said motion so as to permit, among other things, the use of the papers by Government officers in the course of investigations that they may make with a view of securing evidence of the guilt of persons other than the petitioners in committing the crime charged against the petitioners and/or other violations of the national prohibition act; and decision having been reserved on said motion made by petitioners and said motion made by the United States attorney herein for modification of said stay, and decision having been rendered and the opinion of the court having been filed, and the said acting United

States attorney having, since the argument of said motion, been succeeded in office by George Z. Medalie, the present United States attorney:

Now, upon said motion of the United States attorney, said order to show cause and affidavits and papers submitted in support of and in opposition to the petitioners' said motion and all the proceedings heretofore had herein; it is

On motion of George Z. Medalie, United States attorney for the southern district of New York;

Ordered, that said motion of the respondent for an order modifying said stay included as a part of said order to show cause signed by Judge Henry W. Goddard on January 21, 1931, to the extent hereinafter provided be and the same hereby is granted; and it is further

Ordered, that the said stay included as a part of said order to show cause be and the same hereby is modified to read:

That the United States attorney for the southern district of New York be, and he hereby is, stayed from using the papers and things seized by the Government officers in room 604 of the building 1547 Broadway, Borough of Manhattan, city and State of New York, at the time of the arrest of the petitioners in said room on January 12, 1931, as evidence in a trial of the petitioners or either of them, pending the entry of an order determining petitioners' said motion for the return of said seized papers and the suppression of their use as evidence and for a further period of ten (10) days after the entry of said order, and if an appeal be taken from said order within the said ten (10) day period pending the determination of the appeal; and it is further

Ordered, that the said stay included in said order to show cause except as herein modified, and in so far as it otherwise provides, be, and the same hereby is, vacated.

FRANCIS G. CAFFEY,
U. S. D. J.

In United States District Court

[Title omitted.]

Petition for Appeal

To the honorable judges of the United States District Court for the Southern District of New York:

And now come the petitioners, Daniel M. Lefkowitz and Pauline Paris, by David P. Siegel, their attorney, and complain that in the order and decision of Hon. Francis G. Caffey, United States district judge, made and entered herein on the 18th day of February, 1931, and also in the opinion of the said Judge Francis G. Caffey

dated the 13th day of February, 1931, in so far as it denied the application of the petitioners for the suppression of any and all evidence of whatever nature, obtained directly or indirectly by reason of a search of the premises, room No. 604 in No. 1547 Broadway, in the Borough of Manhattan, City, State and Southern District of New York, on the 12th day of January, 1931, and for the return of all books, papers, correspondence and other papers, records and things belonging to the said Daniel M. Lefkowitz, and for such other and further relief as to this court may seem just and proper. And also in so far as the said order vacated and modified a stay contained in an order to show cause heretofore issued herein, certain manifest errors have intervened to the great prejudice and damage of the said petitioners, and conceiving themselves aggrieved thereby, said petitioners do hereby

Appeal from the said order to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the assignments of error which are filed herewith and pray for the allowance of the appeal herein, and for such other and further orders and processes as may cause all and singular the records, papers, and proceedings in said cause to be sent to the United States judges for the Circuit Court of Appeals for the Second Circuit under and according to the laws of the United States in that behalf made and provided, so that the same may be inspected and said judges of the said Circuit Court of Appeals for the Second Circuit may cause further to be done therein to correct that error, what of right and according to law ought to be done, and also that an order be made herein that all other proceedings in this action may be suspended and stayed until the determination of said appeal by the United States Circuit Court of Appeals for the Second Circuit, and also that a citation may issue herein as provided by law and also that the said petitioners be given leave to file with the clerk of the United States District Court for the Southern District of New York within thirty days from the date hereof, additional and/or amended assignments of error, and that the same may be included in the transcript of record in addition to and/or in the place and stead of the assignments of error now presented by the said petitioners.

And your petitioners will ever pray.

Dated New York, February 27th, 1931.

DAVID P. SIEGEL,
Attorney for Petitioners,
Office & P. O. Address, No. 11 Broadway,
Borough of Manhattan, City of New York.

In United States District Court

[Title omitted.]

Order Allowing Appeal

Feb. 28, 1931

On reading the petition of Daniel M. Lefkowitz and Pauline Paris, the petitioners herein, for the allowance of an appeal from the order of Hon. Francis G. Caffey, United States district judge for the southern district of New York, entered herein on the 18th day of February, 1931, and the assignments of error presented on behalf of the said petitioners, it is hereby

Ordered, that an appeal be, and the same hereby is, allowed to the said Daniel M. Lefkowitz and Pauline Paris from the order of the United States District Court for the Southern District of New York, to the United States Circuit Court of Appeals for the Second Circuit, as prayed for in the petition for the allowance of an appeal, and it is hereby further

Ordered, that the said appeal shall operate as a supersedeas and that pending the final determination of the said appeal by the United States Circuit Court of Appeals for the Second Circuit, the United States attorney for the southern district of New York, be, and he hereby is, for the period herein stated, stayed from using all of the books, papers, correspondence, and other papers, records, and things seized by the Government officers in room 604 of the building #1547 Broadway, in the Borough of Manhattan, city, State, and southern district of New York, at the time of the arrest of the petitioners in the said room on the 19th day of January, 1931, as evidence in a trial of the petitioners or either of them, and it is hereby further

Ordered, that a transcript of all and singular the records, papers, and proceedings herein be duly authenticated and transmitted to the said United States Circuit Court of Appeals for the Second Circuit, and that a citation be issued as provided by law.

FRANCIS G. CAFFEY,
United States District Judge.

[Title omitted.]

In United States District Court

Assignments of Error

Now come the petitioners-appellants, Daniel M. Lefkowitz and Pauline Paris, by David P. Siegel, their attorney, and make and file their assignments of error, respectfully, showing that the court below erred in each of the following respects:

First: That the court erred in denying the application of the petitioner, Daniel M. Lefkowitz, for the suppression of any and all evidence of whatever nature obtained directly or indirectly by reason

of a search of the premises, room 604, at #1547 Broadway, in the Borough of Manhattan, city, State, and southern district of New York, on the 12th day of January, 1931.

Second. That the court erred in denying the application of the petitioner, Daniel M. Lefkowitz, for the return of all books, papers, correspondence, and other papers, records, and things belonging to the said petitioner and taken by the agents of the United States Department of Justice from the premises aforementioned at the time of the arrest of the petitioner.

Third. That the court erred in denying the application of the petitioner, Pauline Paris, for the suppression of the letter addressed to Assistant United States Attorney Grant, referred to in the affidavit of petitioner, Pauline Paris.

Fourth. That the court erred in denying the application of the petitioner Pauline Paris for the return of the letter addressed to the assistant United States attorney referred to in the affidavit of the petitioner, Pauline Paris.

Fifth. That the court erred in refusing to find that the search of the premises, room 604, at #1547 Broadway, in the Borough of Manhattan, city, State, and southern district of New York, and the seizure of the books, papers, correspondence, and other papers, records, and things belonging to the said petitioners was not in violation of the petitioners' rights under the fourth and fifth amendments to the Constitution of the United States.

Sixth. That the court erred in holding that the case of Go-Bart Importing Co. *v.* United States, 282 U. S. ——; 51 Sup. Ct. 153; 75 Lawyers Ed. 185, was not binding upon the court in the case at bar.

Seventh. That the court erred in holding that the case at bar was governed by the ruling of the United States Supreme Court in Marron *v.* United States, 275 U. S. 192.

Eighth. That the court erred in holding that the petitioners were properly and lawfully arrested by the deputy marshal pursuant to the authority vested in him and the duty imposed on him by a warrant of arrest.

Ninth. That the court erred in holding that the premises, room 604, #1547 Broadway, in the Borough of Manhattan, city, State, and southern district of New York, constituted a single room.

Tenth. That the court erred in holding that the offense charged in the complaint was actually in progress and was being participated in by both petitioners in room 604, #1547 Broadway, in the Borough of Manhattan, city, State, and southern district of New York, at the time of the arrest.

Eleventh. That the court erred in holding that the books, papers, correspondence, and all other papers, records, and things belonging to the petitioners herein were either contraband within Carroll *v.* United States, 267 U. S. 132, or were being employed as the usual and ordinary means of carrying on the criminal enterprise for which the arrest was made.

Twelfth. That the court erred in holding that each paper taken was, within the meaning of sections 33 and 34 of title 27 of the U. S. Code, property kept and used in the maintenance of a place where there was being maintained a violation constituting the nuisance denounced.

Thirteenth. That the court erred in holding that the premises, room 604, #1547 Broadway, in the Borough of Manhattan, City, State and Southern District of New York, could be a nuisance although there was never actually any liquor on the premises and that sections 33 and 34 of title 27 of the U. S. Code could be violated without the physical presence of intoxicating liquor in the premises.

Fourteenth. That the court erred in holding that the petitioners and their associates had gathered in the premises, room 604, #1547 Broadway, in the City, State and Southern District of New York, and were engaged in the conduct of the conspiracy or any act to effect its object at the time of their arrest.

Fifteenth. That the court erred in holding that the letter addressed to the assistant United States attorney referred to in the affidavit of the petitioner, Pauline Paris, was voluntarily typed by her.

Sixteenth. That the court erred in holding that it was immaterial that the agent of the Department of Justice who obtained the aforementioned letter typed by the petitioner, Pauline Paris, had an ulterior motive so long as no force was employed.

Seventeenth. That the court erred in holding that with respect to the aforementioned letter typed by the petitioner, Pauline Paris, that the case of Gouled *v.* United States, 255 U. S. 298, was inapplicable and that the case was governed by United States *v.* Maresca, 266 Fed. 713, 718, 719.

Eighteenth. That the court erred in holding that there was no occasion for making anybody except the United States attorney a respondent in the proceeding herein, and that there was no justification for continuing a stay against others named in the order to show cause.

Nineteenth. That the court erred in holding that the complaint and the warrant of arrest based thereon were regular and sufficient.

Wherefore the said petitioners-appellants, Daniel M. Lefkowitz and Pauline Paris, pray that the said order of the United States District Court for the Southern District of New York may be reversed and held for naught.

Dated, New York, February 27th, 1931.

DAVID P. SIEGEL,
Attorneys for Petitioners,
Office & P. O. Address, No. 11 Broadway,
Borough of Manhattan, City of New York.

[Citation in usual form omitted in printing.]

In United States Circuit Court of Appeals, for the Second Circuit

IN THE MATTER OF THE APPLICATION OF DANIEL M. LEFKOWITZ AND Pauline Paris for the suppression of any and all evidence of whatever nature, obtained directly or indirectly by reason of a search of premises room #604 in #1547 Broadway, in the Borough of Manhattan, City and State of New York, and for the return of all books, papers, correspondence and all other papers and records belonging to the said Daniel M. Lefkowitz, etc.

UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, respondent

M 18/367

Stipulation and order waiving printing of exhibits

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the printing of all of the exhibits herein, consisting of the seized papers referred to the affidavit of Ulysses S. Grant (p. 17), and in the opinion of Caffey, D. J. (p. 84), be, and the same hereby is, waived, and that such exhibits may be submitted to the Circuit Court of Appeals for the Second Circuit upon the argument, either in their original form or in the form of photostatic copies, with like force and effect as though physically reproduced herein.

Dated, New York, April 27, 1931.

DAVID P. SIEGEL,
Attorney for Petitioners-Appellants.
GEORGE Z. MEDALIE,
United States Attorney.

So ordered this 27th day of April, 1931.

MANTON,
U. S. C. J.

In United States District Court

[Title omitted.]

Stipulation as to record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said district court in the above-entitled matter as agreed on by the parties.

Dated, New York, April 27th, 1931.

DAVID P. SIEGEL,
Attorney for Petitioners-Appellants.
GEORGE Z. MEDALIE,
United States Attorney for the Southern District of New York,
Attorney for Respondent-Appellee.

[Clerk's certificate to foregoing transcript omitted in printing.]

In United States Circuit Court of Appeals for the Second Circuit

No. 432, October term, 1930

Argued June 2, 1931. Decided July 10, 1931

IN THE MATTER OF THE APPLICATION OF DANIEL M. LEFKOWITZ AND Pauline Paris, petitioners-appellants, for the suppression of any and all evidence of whatever nature, obtained directly or indirectly by reason of a search of premises Room No. 604 in No. 1547 Broadway, in the Borough of Manhattan, city and State of New York, and for the return of all books, papers, correspondence and all other papers and records belonging to the said Daniel M. Lefkowitz, et cetera

UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, respondent-appellee

Appeal from the District Court of the United States for the Southern District of New York.

Before Manton, Swan, and Chase, circuit judges.

Appeal from an order of the District Court for the Southern District of New York denying an application of petitioners, who are now the appellants, for the suppression of evidence and the return of books and papers seized. Reversed in part.

David P. Siegel, of New York City (Milton B. Seasonwein, of New York City, of counsel), for appellants.

George Z. Medalie, U. S. atty., of New York City (Ulysses S. Grant, asst. U. S. atty., of New York City, of counsel), for appellee.

Opinion

CHASE, Circuit Judge: These two petitioners were arrested, together with one Williams, who was later released, in room 604, at No. 1547 Broadway, New York City, January 12, 1931, by a deputy United States marshal in execution of a John Doe Warrant. They were charged with maintaining a liquor nuisance and with conspiracy to violate the national prohibition act. Four special agents assisted in making the arrests, which are to be treated as having been made lawfully.

Room 604 was on the sixth floor of a building at the above address, and was about ten feet wide and twenty feet long. It was divided by a partition into a front office and a back office, and used ostensibly by a real estate agency. At the time the men were arrested Pauline Paris, who was employed as a typist in the office, was not present, but came in soon afterwards and was immediately placed under arrest. When they were arrested the men were searched. Various papers were taken from the person of Lefkowitz and delivered to the United States attorney, who now has possession of all of them except what

he has consented to return. A small bottle of whisky was taken from Williams.

Contemporaneously with the arrests, both rooms were thoroughly searched. Two desks were opened, ransacked, and papers they contained seized; a towel cabinet was searched and papers in it seized; waste paper baskets were emptied and scraps of paper taken from them and later pasted together. All that was seized after this search was delivered to the United States attorney, who now has possession of so much thereof as he has not seen fit to return.

After she was arrested Pauline Paris was told by one of the officers that he would try to procure her release on bail and thus make it unnecessary for her to remain in jail over night if she would write on her typewriter a letter he would dictate and place her signature upon it. She readily consented to do so, and the following letter was written.

ULYSSES GRANT,

Post Office Bldg., New York City.

MY DEAR MR. GRANT: Since everything has gone fine, I would suggest that this girl whose name is signed below be left out as soon as bail is arranged for her.

Very truly yours,

J. RAY OLIVER.

[S] PAULINE PARIS.

It was entirely in typewriting, except the name Pauline Paris, which was in her handwriting. The officer intended to, and did, facilitate her release on bail, but his primary purpose in having the letter written was to obtain a sample of her work on that typewriter and her signature.

One of the two desks searched was in each office into which the room had been divided. In the desk in the back office a small bottle partly filled with alcohol was found and seized. No other intoxicating liquor was discovered except that which Williams had. The search and seizure was made without a search warrant, and is claimed to have been lawful as an incident of the arrests.

Although this case differs from United States *v.* 1,013 Crates of Empty Old Smuggler Whiskey Bottles, etc., 50 F.(2d)——, just decided by this court, in that this comes up on appeal from the denial of an application for the suppression and return of evidence seized while the appeal in that case was from a decree on a libel for forfeiture of contraband, the right to search and seize as an incident of a lawful arrest is, here as there alone relied upon by the Government in justification.

As is so well shown in Boyd *v.* United States, 116 U. S. 616, 6 S. Ct. 524, 29 L. Ed. 746, the right to search for and seize contraband when it is done lawfully is utterly unlike a search for evidence merely and the seizure of one's private books and papers for the sole purpose of using them for purposes of incrimination. Without con-

fusing a search for and seizure of contraband of which the Government is entitled to take possession because of what in law is said to be the inherent guilt of the res itself and the search for and seizure of books, papers, documents with a like which are not, at least as yet, considered guilty themselves, but are only wanted to prove the guilt of persons or property, it is needless to emphasize that searches and seizures of both kinds must always be reasonable to be lawful. Whenever evidence is searched for and seized, it must be in connection with something else which gives to the public a paramount interest in it. Gouled *v.* United States, 255 U. S. 298, at page 309; 41 S. Ct. 261; 65 L. Ed. 647. This happens when it is done as an incident of a lawful arrest or a lawful seizure of contraband; but a search and seizure can not be reasonable, and therefore, justified, if it is based solely on the purpose to obtain nothing but information generally which may, perhaps, be proof that a crime has been committed. Evidence so obtained is not admissible against the person or persons whose rights have been violated. To admit it would be contrary to the fifth amendment in that part which reads "no person * * * shall be compelled in any criminal case to be a witness against himself." Boyd *v.* United States, supra; Gouled *v.* United States, supra. Consequently, when a seizure of contraband is defended as an incident of a lawful arrest, as in United States *v.* 1,013 Crates, etc., supra, or a seizure of evidence is defended on the same ground, as in this case, the reasonableness of the search which resulted in the seizure is the test of legality in each instance.

The application of this principle to the present case results at once in dividing the property seized into two classes—that which was taken from the person of petitioner Lefkowitz when he was arrested and searched; and that which was seized when the office and its furniture were explored for evidence.

The things that were found on Lefkowitz were lawfully seized and may be used against him. Agnello *v.* United States, 269 U. S. 20, 46 S. Ct. 4, 70 L. Ed. 145, 51 A. L. R. 409; Marron *v.* United States, 275 U. S. 192, 48 S. Ct. 74, 72 L. Ed. 231; United States *v.* Kirschenblatt (C. C. A.) 16 F.(2d) 202, 51 A. L. R. 416. The law on this subject has long been so well settled that it is useless to do more than state it whenever occasion arises. It is difficult to conceive how the facts in one case can make it differ from others in this respect, and such a search properly conducted is reasonable as a matter of law.

What was seized in the search of the offices falls within the second class, and the application of the governing legal principles to whatever such searches and seizures may be made may lead to different results as circumstances may differ. It comes right down to what may be reasonable in fact. There are, however, certain fixed boundaries which may not be transgressed. One of these, and the only one we need to mention now, is the firmly rooted proposition that

what are called general exploratory searches throughout premises and personal property are forbidden. It does not matter whether the premises are comparatively large or small, whether the articles of personal property opened and the contents examined are numerous or few, the right of personal security, liberty, and private property is violated if the search is general, for nothing specific, but for whatever the containers may hide from view, and is based only on the eagerness of officers to get hold of whatever evidence they may be able to bring to light. The legal principles which protect all men equally loom as large at one time as at another, and forbid the search and seizure. Such a search and seizure as these officers indulged themselves in is not like that in Marron *v.* United States, 275 U. S. 192, 48 S. Ct. 74, 72 L. Ed. 231, where things openly displayed to view were picked up by the officers and taken away at the time an arrest was made. The decision that does control is Go-Bart Importing Co. *v.* United States, 282 U. S. 344, 51 S. Ct. 153, 75 L. Ed. ——. Indeed, this case differs in its essential facts from that one so slightly that what is said in that opinion in characterizing the search made will apply with equal force to this one, which must accordingly be held unreasonable.

The only other paper to be dealt with is the letter typed by Pauline Paris. She acted voluntarily and with the knowledge that it was to go to the assistant United States attorney to whom it was written. That the officers wanted it for an undisclosed purpose seems less than enough to require its suppression now. What Judge Hough said in United States *v.* Maresca et al. (D. C.), 266 F. 713, 718 (5), may have been limited somewhat by Gouled *v.* United States, supra, but we do not understand that one who willingly writes a letter to another is entitled to have it suppressed on motion simply because it may be used not only for what the writer intended, but for some other purpose not then foreseen. And this is so, even though an agent of the Government instigated the writing well knowing that it might be used in a way the writer did not suspect. If what was done may be said to be the equivalent of obtaining a confession by fraud or a promise of favor, a matter we do not now either suggest or consider, whatever rights this petitioner may have can all be amply protected by objection if the letter is ever offered in evidence. As the papers seized may be admissible in evidence against others, the petitioners are not entitled to their return now. See In re Dooley (C. C. A.), 48 F. (2d) 121. They are sufficiently protected for the present by having suppressed what was seized unlawfully as to them.

Except as to what was obtained in searching the person of Lefkowitz and as to the letter written by Pauline Paris, the order is reversed, with directions to enter an order in conformity with this opinion.

SWAN, Circuit Judge, dissenting with opinion.

In United States Circuit Court of Appeals for the Second Circuit

No. 432, October term, 1930

Argued June 2, 1931. Decided July 10, 1931

IN THE MATTER OF THE APPLICATION OF DANIEL M. LEFKOWITZ AND Pauline Paris, petitioners-appellants, for the suppression of any and all evidence of whatever nature, obtained directly or indirectly by reason of a search of premises room No. 604 in No. 1547 Broadway, in the Borough of Manhattan, City and State of New York, and for the return of all books, papers, correspondence, and all other papers and records belonging to the said Daniel M. Lefkowitz, et cetera

UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, respondent-appellee

Appeal from the District Court of the United States for the Southern District of New York.

Before Manton, Swan, and Chase, circuit judges.

Dissenting opinion

SWAN, Circuit Judge (dissenting): It is settled law that an officer making a lawful arrest may lawfully search property and premises within the prisoner's immediate control, as well as the prisoner's person, in order to find and seize the things used to carry on the criminal enterprise. Agnello *v.* United States, 269 U. S. 20, 30, 46 S. Ct. 4, 70 L. Ed. 145, 51 A. L. R. 409; Carroll *v.* United States, 267 U. S. 132, 158, 45 S. Ct. 280, 69 L. Ed. 543, 39 A. L. R. 790; Marsh *v.* United States, 29 F. (2d) 172 (C. C. A. 2); Appell *v.* United States, 29 F.(2d) 279 (C. C. A. 5); United States *v.* Kirschenblatt, 16 F.(2d) 202, 203, 51 A. L. R. 416 (C. C. A. 2.). The case of Marron *v.* United States, 275 U. S. 192, 48 S. Ct. 74, 72 L. Ed. 231, applied the principle to include documents and papers used in connection with the crime of maintaining a nuisance in violation of the prohibition act (27 U. S. C. A.). See, also, United States *v.* Poller, 43 F.(2d) 911 (C. C. A. 2); Sayers *v.* United States, 2 F.(2d) 146 (C. C. A. 9); Browne *v.* United States, 290 F. 870 (C. C. A. 6); United States *v.* Durkin, 41 F. (2d) 851 (D. C. M. D. Pa.); United States *v.* Wilson, 163 F. 338 (C. C. S. D. N. Y.). The papers seized are listed in the record, and items 2, 3, 4, and 10 do not appear to have any relation to the crime with which Lefkowitz was charged. The other items, however, business cards, notebooks, lists of names, etc., apparently used in connection with the illegal conspiracy, were, I believe, validly seized.

The cases above cited would seem to justify the search and seizure made by the officers within the small rooms occupied by the prisoner when arrested in the case at bar. Nor do I read the opinion of the

Supreme Court in the recent Go-Bart Case, 282 U. S. 344, 51 S. Ct. 153, 75 L. Ed. ——, as laying down a contrary rule. There the search was deemed unreasonable because of fraud and threats of force by means of which the officers gained access to the locked desks and safe. Here there was nothing of that sort. The cases involving searches of premises incidental to an arrest contain no intimation that the search may not be a thorough one for things concealed. But even if some of the papers were obtained by an unreasonably extensive and exploratory search for documents not open and visible, I think the court would be required to differentiate between the papers thus obtained and those which were within the principle of a reasonable search incidental to a lawful arrest. Because some papers were illegally seized, it does not follow that those lawfully taken must also be returned. In my opinion the order should be affirmed except as to the four items above mentioned as unrelated to the crime.

In United States Circuit Court of Appeals, Second Circuit

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the Post Office Building in the city of New York, on the 17th day of July, one thousand nine hundred and thirty-one.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, circuit judges.

DANIEL M. LEFKOWITZ, AND PAULINE PARIS, PETITIONERS-APPELLANTS,

v.

UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, respondent-appellee

Judgment

Filed July 21, 1931

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said district court be, and it hereby is, reversed in part, with directions to the district court to enter an order in conformity with the opinion of this court.

It is further ordered that a mandate issue to the said district court in accordance with this decree.

WM. PARKIN, *Clerk.*

[File endorsement omitted.]

[Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

Order allowing certiorari

Filed November 30, 1931

The petition herein for a writ of certiorari to the United Stat Circuit Court of Appeals for the Second Circuit is granted. An it is further ordered that the duly certified copy of the transcript the proceedings below which accompanied the petition shall b treated as though filed in response to such writ.

[Indorsement on cover:] Enter Attorney General. File N 36,280. U. S. Circuit Court of Appeals, Second Circuit. Term N 486. United States of America, petitioner, vs. Daniel M. Lefkowi and Pauline Paris. Petition for a writ of certiorari and exhib thereto. Filed October 16, 1931. File No. 36,280.